

**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

**NOTICE OF PROPOSED RULEMAKING**

**Adopted: December 14, 2017**

**Released: December 14, 2017**

**Comment Date: (30 days after date of publication in the Federal Register)**

**Reply Comment Date: (45 days after date of publication in the Federal Register)**

By Commission: Chairman Pai and Commissioners Clyburn, O’Rielly, and Carr issuing separate statements.

**I. INTRODUCTION**

1. In this Notice of Proposed Rulemaking (NPRM), we address ways to modernize certain notice provisions in Part 76 of the Federal Communications Commission’s rules governing multichannel video and cable television service. First, we seek comment on proposals to modernize the rules in Subpart T of Part 76 (Subpart T),<sup>1</sup> which sets forth notice requirements applicable to cable operators. In particular, we propose to allow various types of written communications from cable operators to subscribers to be delivered electronically, if they are sent to a verified e-mail address and the cable operator complies with other consumer safeguards. We also tentatively conclude that subscriber privacy notifications required pursuant to Sections 631, 338(i), and 653 of the Communications Act of 1934, as amended (the Act), may be delivered electronically to a verified e-mail address, subject to consumer safeguards. In addition, we propose to permit cable operators to reply to consumer requests or complaints by e-mail in certain circumstances. Second, we seek comment on how to update the requirement in Sections 76.64 and 76.66 of the Commission’s rules that requires broadcast television stations to send carriage election notices via certified mail. With this proceeding, we continue our efforts to modernize our regulations and reduce unnecessary requirements that can impede competition and innovation in the media marketplace.<sup>2</sup>

**II. BACKGROUND**

2. *Subpart T Cable Notices.* Subpart T regulates various aspects of cable operators’ communications with subscribers as well as with other parties, including television broadcast stations and the Commission.<sup>3</sup> In 1999, the Commission revised and streamlined the cable television notice, public file, and recordkeeping requirements contained throughout Part 76 of the Commission’s rules, and as part

<sup>1</sup> 47 CFR §§ 76.1601-76.1630.

<sup>2</sup> See *Commission Launches Modernization of Media Regulation Initiative*, Public Notice, 32 FCC Rcd 4406 (2017) (initiating a review of rules applicable to media entities to eliminate or modify regulations that are outdated, unnecessary, or unduly burdensome).

<sup>3</sup> Subpart T refers to “subscribers,” “customers,” and “consumers” interchangeably. See, e.g., 47 CFR §§ 76.1602(b), 76.1603(b), 76.1622. In this NPRM, we use the term “subscribers” for consistency, but it includes both “customers” and “consumers” as used in Subpart T.

of this reorganization, it created a new Subpart T for notice requirements.<sup>4</sup> Among other requirements, Subpart T requires cable operators to communicate specified information about various topics to their subscribers in writing, including the following:

- Deletion or repositioning of broadcast signals (47 CFR § 76.1601): Requires cable operators to provide written notice to subscribers if they are deleting a broadcast television station from carriage or repositioning that station.
- Customer service—general information (47 CFR § 76.1602): Requires cable operators to provide written information to subscribers at the time of installation, at least annually, and at any time upon request about: products and services offered; prices and options for programming services and conditions of subscription to programming and other services; installation and service maintenance policies; instructions on how to use the cable service; channel positions of programming carried on the system; billing and complaint procedures; assessed fees for rental of navigation devices and single and additional CableCARDs; and the fees allocable to the rental of single and additional CableCARDs and the rental of operator-supplied navigation devices, if the provider includes equipment in the price of a bundled service offering.
- Customer service—rate and service changes (47 CFR § 76.1603): Requires cable operators to notify customers of any changes in rates, programming services, or channel positions as soon as possible in writing; to notify subscribers a minimum of 30 days in advance of such changes, if the change is within the control of the cable operator; to notify subscribers 30 days in advance of any significant changes in the other information required by Section 76.1602; to give 30 days written notice to subscribers before implementing any rate or service change, stating the precise amount of any rate change and a brief explanation in readily understandable fashion of the cause of the rate change; to provide written notice to a subscriber of any increase in the price to be charged for the basic service tier or associated equipment at least 30 days before any proposed increase is effective (or 60 days if the equipment is provided to the consumer without charge pursuant to Section 76.630), including the price to be charged, the date that the new charge will be effective, and the name and address of the local franchising authority.<sup>5</sup>
- Charges for customer service changes (47 CFR § 76.1604): Requires cable systems to notify all subscribers in writing that they may be subject to a charge for changing service tiers more than the specified number of times in any 12-month period, if the cable operator establishes a higher charge for changes effected solely by coded entry on a computer terminal or by other similarly simple methods.
- Basic tier availability (47 CFR § 76.1618): Requires a cable operator to provide written notification of the availability of basic tier service to new subscribers at the time of installation, which should include that the basic tier is available, the cost per month for basic tier service, and a list of all services included in the basic service tier.
- Availability of signals (47 CFR § 76.1620): Requires a cable operator to notify subscribers of all broadcast stations carried on the cable system which cannot be viewed via cable without a converter box and to offer to sell or lease such a converter box to such subscribers, if a cable operator authorizes subscribers to install additional receiver

<sup>4</sup> See 1998 Biennial Regulatory Review - *Streamlining of Cable Television Services Part 76 Public File and Notice Requirements*, Report and Order, 14 FCC Rcd 4653 (1999); Second Report and Order, 16 FCC Rcd 19773 (2001).

<sup>5</sup> To the extent the cable operator is required to provide notice of service and rate changes to subscribers, the operator may provide such notice using any reasonable written means at its sole discretion. 47 CFR § 76.1603(e).

connections, but does not provide the subscriber with such connections or with the equipment and materials for such connections.<sup>6</sup>

- Equipment compatibility offer (47 CFR § 76.1621): Requires cable system operators that use scrambling, encryption, or similar technologies in conjunction with cable system terminal devices that may affect subscribers' reception of signals to offer to supply each subscriber with special equipment that will enable the simultaneous reception of multiple signals.<sup>7</sup>
- Consumer education program on compatibility (47 CFR § 76.1622): Requires cable system operators to provide a consumer education program on compatibility matters to their subscribers in writing that includes certain information, such as notice that certain models of television receivers and videocassette recorders may not be able to receive all of the channels offered by the cable system when connected directly to the system, as well as an explanation of the types of channel compatibility problems that could occur if the device is connected directly to the system and suggestions to resolve such problems; notice that subscribers may not be able to use special features and functions of their television receivers and videocassette recorders where service is received through a cable system terminal device; and notice that remote control units compatible with cable system terminal devices and other customer premises equipment provided to subscribers may be obtained from other sources, such as retail outlets, as well as a representative list of remote control models that are compatible with deployed customer premises equipment.<sup>8</sup>

3. In June 2017, the Commission issued a Declaratory Ruling (*2017 Declaratory Ruling*) that interpreted the written communications requirement of one section of Subpart T to be satisfied by electronic delivery of written material to subscribers.<sup>9</sup> Specifically, the ruling clarified that the "written information" that cable operators provide to their subscribers annually pursuant to Section 76.1602(b) of the Commission's rules may be provided via e-mail to a verified e-mail address if there is a mechanism for customers to opt out of e-mail delivery and continue to receive paper notices.<sup>10</sup> The Commission found that Section 632(b) of the Act grants the Commission authority to establish the means by which annual notices may be delivered to subscribers and to specify consumer protections with regard to the

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<sup>6</sup> Such notification must be provided to each new subscriber upon initial installation and annually thereafter. *Id.* § 76.1620. The notice, which may be included in routine billing statements, must identify the signals that are unavailable without an additional connection, the manner for obtaining such additional connection, and instructions for installation. *Id.*

<sup>7</sup> The offer of special equipment must be made to new subscribers at the time they subscribe and to all subscribers at least once each year. *Id.* § 76.1621(a).

<sup>8</sup> This information must be provided to subscribers at the time they first subscribe and at least once a year thereafter. *Id.* § 76.1622(a). The rule specifies that this notification requirement may also be satisfied by an annual mailing to all subscribers and may be included in one of the system's regular subscriber billings. *Id.*

<sup>9</sup> See *National Cable & Telecommunications Association and American Cable Association, Petition for Declaratory Ruling*, Declaratory Ruling, 32 FCC Rcd 5269 (2017) (*2017 Declaratory Ruling*). The Declaratory Ruling granted a petition for declaratory ruling filed by NCTA – The Internet and Television Association (NCTA) and the American Cable Association (ACA). See *Petition for Declaratory Ruling of National Cable & Telecommunications Association and American Cable Association*, MB Docket No. 16-126 (filed Mar. 7, 2016) (requesting clarification that the written information that cable operators must provide to their subscribers pursuant to Section 76.1602(b) of the Commission's rules may be provided via electronic distribution).

<sup>10</sup> *2017 Declaratory Ruling*, 32 FCC Rcd at 5269, para. 1.

delivery of the notices.<sup>11</sup> It concluded that the statute does not impose any limitations on the Commission's authority under Section 632(b) to specify the means by which cable operators may deliver notices to consumers.<sup>12</sup> The Commission determined that a verified e-mail address is necessary to ensure that the written information is provided – *i.e.*, made available – to subscribers, as is required by Section 76.1602(b).<sup>13</sup> The Commission also cited policy arguments that it found to be persuasive in support of interpreting the “written information” requirement of Section 76.1602(b) to encompass electronic distribution to a verified e-mail address, such as the positive environmental aspects of saving substantial amounts of paper annually, increased efficiency, and enabling customers to more readily access accurate information about their service options.<sup>14</sup> The Commission concluded that electronic delivery of annual notices would greatly ease the burden of complying with these notification requirements for all cable operators, including small cable operators.<sup>15</sup>

4. As discussed in more detail below, parties responding to the Commission's Modernization of Media Regulation Initiative ask the Commission to consider permitting electronic delivery of information required to be provided by cable operators to subscribers in writing pursuant to Subpart T, consistent with the Commission's findings in the *2017 Declaratory Ruling*,<sup>16</sup> and to consider other changes to the rules in Subpart T.<sup>17</sup>

5. *Carriage Election Notices.* When the Commission implemented the law establishing the must carry/retransmission consent regime,<sup>18</sup> it adopted a requirement that each commercial television broadcast station provide periodic notice to cable operators electing either to demand carriage or to withhold carriage absent express consent.<sup>19</sup> A similar requirement, applying to both commercial and

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<sup>11</sup> *Id.* at 5273, para. 7.

<sup>12</sup> *Id.* In the Cable Television Consumer Protection and Competition Act of 1992, Congress, in order to “provide increased consumer protection,” amended Section 632 of the Act to require the Commission to adopt customer service standards for cable operators. Pub. L. No. 102-385, 106 Stat. 1460 (1992); 47 U.S.C. § 552. In Section 632(b), Congress directs the Commission to “establish standards by which cable operators may fulfill their customer service requirements” and specifies that “[s]uch standards shall include, at a minimum, requirements governing . . . communications between the cable operator and the subscriber (including standards governing bills and refunds).” 47 U.S.C. § 552(b)(3).

<sup>13</sup> *2017 Declaratory Ruling*, 32 FCC Rcd at 5274, para. 9.

<sup>14</sup> *Id.* at 5272-73, para. 6.

<sup>15</sup> *Id.* at 5273, para. 8.

<sup>16</sup> *See infra* para. 7.

<sup>17</sup> *See infra* Section III.A.

<sup>18</sup> “The Communications Act prohibits cable operators and other multichannel video programming distributors from retransmitting commercial television, low power television and radio broadcast signals without first obtaining the broadcaster's consent. This permission is commonly referred to as ‘retransmission consent’ and may involve some compensation from the cable company to the broadcaster for the use of the signal. Alternately, local commercial and noncommercial television broadcast stations may require a cable operator that serves the same market as the broadcaster to carry its signal. A demand for carriage is commonly referred to as ‘must-carry.’ If the broadcast station asserts its must-carry rights, the broadcaster cannot demand compensation from the cable operator. While retransmission consent and must-carry are distinct and function separately, they are related in that commercial broadcasters are required to choose once every three years, on a system-by-system basis, whether to obtain carriage or continue carriage by choosing between must carry and retransmission consent.” FCC Media Bureau, *Cable Carriage of Broadcast Stations*, <https://www.fcc.gov/media/cable-carriage-broadcast-stations> (last visited Oct. 4, 2017).

<sup>19</sup> 47 CFR § 76.64(h) (adopted in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Broadcast Signal Carriage Issues*, Report and Order, 8 FCC Rcd 2965, 3003, para. 160 (1993)).

noncommercial television broadcast stations, was adopted as part of the “carry one, carry all” regime for Direct Broadcast Satellite (DBS) carriers.<sup>20</sup> In both cases, the election notice must be sent via certified mail once every three years by each broadcaster to each cable system and DBS carrier serving the station’s market. A number of broadcaster commenters in the Media Modernization proceeding propose changes to this process, as set forth below.<sup>21</sup>

### III. DISCUSSION

#### A. Modernization of MVPD Notice Requirements

##### 1. Electronic Distribution of Notices to Subscribers

6. We propose to adopt a rule that would allow various types of generic written communications from cable operators to subscribers to be delivered electronically, if they are sent to a verified e-mail address and the cable operator complies with other consumer safeguards.<sup>22</sup> This includes generic written information provided to consumers about the deletion or repositioning of broadcast signals (Section 76.1601); general information about services offered (Section 76.1602); rate and service changes (Section 76.1603); charges for customer service changes (Section 76.1604); basic tier availability (Section 76.1618); availability of signals (Section 76.1620); equipment compatibility offer (Section 76.1621); and consumer education program on compatibility (Section 76.1622).<sup>23</sup> Consistent with the Commission’s clarification in the *2017 Declaratory Ruling* that written information required under Section 76.1602(b) can be sent via e-mail to a verified e-mail address with inclusion of an opt-out mechanism, we tentatively conclude to adopt a rule reflecting these requirements with respect to Section 76.1602(b) and some of the other subscriber notices required in the rules listed above.<sup>24</sup> With respect to notices that pertain to rate and service changes, charges for customer service changes, basic tier availability, and subscriber privacy,<sup>25</sup> we tentatively conclude that these notices can be sent via e-mail to a verified e-mail address and seek comment on whether consumers should have to opt in to begin receiving these notices electronically. Alternatively, we seek comment on whether these notifications should be treated like the other ones in Subpart T such that cable operators should be permitted to deliver these notices electronically, if they allow consumers to opt out of e-mail delivery and continue to receive paper notices.

7. In comments filed in the Modernization of Media Regulation Initiative docket, some industry commenters request that the Commission take steps to ease the burden of complying with the cable notice requirements, such as by permitting electronic distribution of written notifications to subscribers. NCTA asks the Commission to adopt more efficient, less costly ways to provide required notices, and it contends that cable operators should expressly be permitted to correspond with customers via electronic means, if the customer has provided the cable operator with an e-mail address or contacted

<sup>20</sup> 47 CFR § 76.66(d) (adopted in *Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues; Retransmission Consent Issues*, Report and Order, 16 FCC Rcd 1918, 1932, para. 30 (2000)). “Carry one, carry all” refers to the fact that DBS carriers are not required to carry any local broadcast stations in a market, but must carry all of them upon request if any are carried (with certain narrow exceptions). The DBS “mandatory carriage/retransmission consent” regime otherwise functions in a manner very similar to the cable “must carry/retransmission consent” regime described in note 18, above.

<sup>21</sup> See *infra* note 88.

<sup>22</sup> See Appendix A, Proposed Rules. By “generic” or “general,” we mean information that applies to subscribers or groups of subscribers generally (e.g., those residing in the same zip code; those subscribing to the same service, etc.) and is not specific to an individual subscriber. See *2017 Declaratory Ruling*, 32 FCC Rcd at 5275, para. 10, n.40.

<sup>23</sup> 47 CFR §§ 76.1601-76.1604, 76.1618, 76.1620-76.1622; *supra* para. 2.

<sup>24</sup> See *supra* para. 3.

<sup>25</sup> 47 CFR §§ 76.1603-76.1604, 76.1618; 47 U.S.C. §§ 551(a)(1), 338(i), 573(c)(1)(a). See *infra* paras. 13, 18.

the cable operator using such means.<sup>26</sup> ACA agrees with NCTA that, “at a minimum, the Commission should clarify that the written notice requirement as it pertains to [customer notification] provisions can be satisfied via electronic notice.”<sup>27</sup> ACA posits that “electronic notification would provide welcomed relief to cable operators and other entities from paperwork burdens.”<sup>28</sup> According to ACA, modifying subscriber notification rules can relieve cable operators from undue burdens and reduce subscriber “notice fatigue.”<sup>29</sup> Verizon agrees that “electronic delivery should be available for required notices to subscribers.”<sup>30</sup> Frontier Communications Corporation (Frontier) supports reform of “outdated notice requirements that were created before companies had websites and before customers had email.”<sup>31</sup>

8. We tentatively conclude that permitting cable operators to deliver the aforementioned subscriber notices by e-mail would serve the public interest. We believe that the policy considerations that the Commission found persuasive in the *2017 Declaratory Ruling* clarifying that the annual notices required under 76.1602(b) may be delivered electronically apply equally with respect to other subscriber notices required in Subpart T of the rules,<sup>32</sup> and we seek comment on our tentative conclusion that the public interest would be served by our proposal. We note that no party in the media modernization proceeding has opposed the cable industry’s request to permit electronic distribution of notices to subscribers.

9. In the *2017 Declaratory Ruling*, the Commission concluded that it has authority to establish the means by which Subpart T notices may be delivered to subscribers and to specify consumer protections with regard to the delivery of the notices.<sup>33</sup> As noted above, Section 632(b) of the Act provides the Commission with broad authority to “establish standards by which cable operators may fulfill their customer service requirements.”<sup>34</sup> Moreover, the statute does not impose limitations on the Commission’s authority to specify the means by which cable operators may deliver notices to or otherwise communicate with consumers (including communications about bills and refunds).<sup>35</sup> Because the Commission has authority to establish standards governing communications between cable operators and subscribers, and e-mail is one such method of communication, we believe permitting cable operators to deliver subscriber notices by e-mail is consistent with Section 632(b).

10. A different statutory standard applies to notices of service and rate changes provided to subscribers pursuant to Section 76.1603. Section 632(c) of the Act states that “[a] cable operator may provide notice of service and rate changes to subscribers using any reasonable written means at its sole discretion.”<sup>36</sup> Section 76.1603, which implements Section 632(c), also states that notice of rate or service

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<sup>26</sup> Comments of NCTA – The Internet and Television Association, at 4-5 (NCTA Comments).

<sup>27</sup> Reply Comments of the American Cable Association, at 9 (ACA Reply). ACA asks the Commission to launch a rulemaking to update outdated subscriber notification requirements. See Comments of the American Cable Association, at 18-26 (ACA Comments).

<sup>28</sup> ACA Reply at 9.

<sup>29</sup> ACA Comments at 19.

<sup>30</sup> Reply Comments of Verizon, at 6 (Verizon Reply).

<sup>31</sup> Reply Comments of Frontier Communications Corp., at 6 (Frontier Reply).

<sup>32</sup> See *supra* para. 3.

<sup>33</sup> *2017 Declaratory Ruling*, 32 FCC Rcd at 5273, para. 7.

<sup>34</sup> 47 U.S.C. § 552(b). See *supra* para. 3, note 12.

<sup>35</sup> See *id.*

<sup>36</sup> See 47 U.S.C. § 552(c). See also *2017 Declaratory Ruling*, 32 FCC Rcd at 5273, n.27; *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, Report and Order, 14 FCC Rcd 5296, 5363, para.

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changes can be made by any reasonable written means at the discretion of the cable operator.<sup>37</sup> We tentatively conclude that “reasonable written means” includes distribution via e-mail to a verified e-mail address. We tentatively find that permitting cable operators to deliver notices about service and rate changes via e-mail satisfies the “written means” requirement of Section 632(c). As we have found previously, e-mails, by their very nature, convey information in writing.<sup>38</sup> Section 632(c) further requires the written means chosen by the cable operator to be “reasonable.”<sup>39</sup> For the reasons described below, we tentatively find that to be “reasonable,” a cable operator must use a subscriber’s verified e-mail address.<sup>40</sup> We seek comment on these tentative conclusions.

11. We believe that certain consumer safeguards must be put in place if cable operators are permitted to disseminate written notifications to subscribers electronically with respect to Subpart T notification rules. First, we tentatively conclude that cable operators must have verified e-mail contact information if they choose to deliver notifications to subscribers via e-mail, and, if no verified e-mail contact information is available for a particular subscriber, cable operators must continue to deliver notices via paper copies to that subscriber.<sup>41</sup> In the *2017 Declaratory Ruling*, the Commission determined that, for purposes of satisfying the requirements of Section 76.1602(b), each of the following would be considered to be a verified e-mail address: (1) an e-mail address that the subscriber has provided to the cable operator (and not *vice versa*) for purposes of receiving communication, (2) an e-mail address that the subscriber regularly uses to communicate with the cable operator, or (3) an e-mail address that has been confirmed by the subscriber as an appropriate vehicle for the delivery of notices.<sup>42</sup> We see no reason to deviate from the criteria identified in the *2017 Declaratory Ruling*, and we propose to adopt this as a definition of the term “verified e-mail address” as part of our rules.<sup>43</sup> This definition was proposed by the cable industry, and we found that it set acceptable parameters for the e-mail delivery of written material.<sup>44</sup> We seek comment on this proposal and tentative finding.

12. Second, we tentatively conclude that cable operators must provide a mechanism for subscribers to opt out of e-mail delivery and continue to receive paper notices with respect to the following Subpart T notification rules: generic written information provided to consumers about the deletion or repositioning of broadcast signals (Section 76.1601); general information about services offered (Section 76.1602); availability of signals (Section 76.1620); equipment compatibility offer (Section 76.1621); and consumer education program on compatibility (Section 76.1622).<sup>45</sup> In the *2017 Declaratory Ruling*, the Commission determined that to satisfy Section 76.1602(b), cable operators must include an opt-out telephone number that is clearly and prominently presented to subscribers in the body

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156 (1999) (“[N]otices of rate changes provided to subscribers through written announcements on the cable system or in the newspaper will be presumed sufficient.”).

<sup>37</sup> See 47 CFR § 76.1603(e). See also NCTA Comments at 7-8 (requesting that the Commission clarify that a written notice for purposes of Section 76.1603 includes an electronic notice); Frontier Reply at 8 (same).

<sup>38</sup> *2017 Declaratory Ruling*, 32 FCC Rcd at 5272, para. 6.

<sup>39</sup> See 47 U.S.C. § 552(c).

<sup>40</sup> See *infra* para. 11.

<sup>41</sup> *2017 Declaratory Ruling*, 32 FCC Rcd at 5274, para. 9.

<sup>42</sup> *Id.*

<sup>43</sup> See Appendix A, Proposed Rules, Section 76.1600(b) for the proposed definition.

<sup>44</sup> See *2017 Declaratory Ruling*, 32 FCC Rcd at 5274, para. 9 (“By requiring the use of a verified email address, we will ensure that the . . . notices have a high probability of being successfully delivered electronically to an email address that the customer actually uses, so that the written information is actually provided to the customer.”).

<sup>45</sup> 47 CFR §§ 76.1601-76.1602, 76.1620-76.1622; *supra* para. 2.

of the originating e-mail that delivers the notices, so that it is readily identifiable as an opt-out option, to ensure that customers continue to be provided information in a way that they will actually accept and receive.<sup>46</sup> We tentatively find that it is necessary to allow subscribers to opt out of e-mail delivery and to provide an opt-out mechanism that is clearly and prominently presented in the body of the originating e-mail for purposes of the aforementioned notice rules in Subpart T, and we seek comment on this tentative finding.<sup>47</sup> Should we require that cable operators provide a telephone opt-out method as a minimum requirement, consistent with the *2017 Declaratory Ruling*? Or, should we also permit cable operators to provide the opt-out mechanism via an electronic link that allows subscribers to identify their delivery preferences electronically, as an alternative to providing the opt out mechanism via a telephone number?<sup>48</sup> We recognize that subscribers are accustomed to having electronic opt-out links available in commercial e-mails,<sup>49</sup> and that, for many Internet-savvy subscribers, an electronic link will be more efficient than a telephone number. However, in the *2017 Declaratory Ruling*, the Commission found that providing a telephone number “would be the means most universally accessible to customers that prefer not to receive their notices electronically,” and it specified this as the minimum requirement.<sup>50</sup> Is there reason to deviate from that approach for purposes of our rules? To the extent we adopt safeguards that differ from those specified in the *2017 Declaratory Ruling*, should we adopt such safeguards also with respect to the annual notices required under Section 76.1602(b) of the rules, or is there a reason to treat 76.1602(b) differently?

13. With respect to notices of rate and service changes pursuant to Section 76.1603, charges for customer service changes pursuant to Section 76.1604, and basic tier availability pursuant to Section 76.1618, we seek comment on whether subscribers should have to opt in to begin receiving these notices electronically.<sup>51</sup> Does the nature of these notices in particular necessitate that cable operators have an opt-in safeguard in place with respect to these notices? If so, what specific opt-in procedures should be required? Or, alternatively, should these notifications be treated like the other ones in Subpart T such that cable operators should be permitted to deliver these notices electronically, if they allow consumers to opt out of e-mail delivery and continue to receive paper notices? Are there advantages to both consumers and cable operators in having various notices treated in a similar manner?

14. In the *2017 Declaratory Ruling*, the Commission found that inclusion of a website link to the notice itself would be considered reasonable when annual notices are delivered via e-mail, provided the link remains active until superseded by a subsequent notice, and would give customers flexibility to choose when to review the annual notices.<sup>52</sup> We tentatively conclude that this finding should also apply with respect to any other Subpart T subscriber notices that the Commission permits cable operators to send to subscribers via e-mail, and we seek comment on this tentative finding.

15. We also seek comment on whether we should permit cable operators to provide to

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<sup>46</sup> *2017 Declaratory Ruling*, 32 FCC Rcd at 5275, para. 10.

<sup>47</sup> *See id.*

<sup>48</sup> *See* Appendix A, Proposed Rules, Section 76.1600(d)(2). *See also 2017 Declaratory Ruling*, 32 FCC Rcd at 5276, para. 10 (agreeing with commenters that providing a link for customers to identify their delivery preference electronically “could also be efficient and convenient for many customers”).

<sup>49</sup> Commercial e-mails must include an opt-out option under the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, 15 U.S.C. § 7701, *et seq.* (CAN-SPAM Act). Many commercial e-mails satisfy this requirement with an “unsubscribe” link.

<sup>50</sup> *See also 2017 Declaratory Ruling*, 32 FCC Rcd at 5276, para. 10. The Commission also noted that, while providing an opt-out telephone number is a minimum requirement, “cable operators may choose to offer additional choices to their customers that are clearly and prominently presented in the body of the originating e-mail.” *Id.*

<sup>51</sup> 47 CFR §§ 76.1603-76.1604, 76.1618.

<sup>52</sup> *2017 Declaratory Ruling*, 32 FCC Rcd at 5276, para. 11, n.46.



subscribers notices of general information at the time of installation and annually thereafter pursuant to Section 76.1602 and information on basic tier availability pursuant to Section 76.1618 by posting the written material on the cable operator's website, in lieu of providing such notice to subscribers via U.S. mail or electronic delivery to a verified e-mail address.<sup>53</sup> NCTA, Frontier, and ACA identify these two requirements in particular as suitable for website posting.<sup>54</sup> We seek comment on whether it is appropriate for these types of generic notifications to be provided to subscribers via website posting. We seek input on the benefits, both to cable operators and to subscribers, of permitting notices via website posting to fulfill these written notice requirements as well as any potential burdens this may pose to subscribers. Would subscribers benefit from having an option that allows them to access written material via the cable operator's website at any time that is convenient to them, as opposed to either paper copies delivered to a physical address or e-mail copies delivered to a verified e-mail address? Would website posting lessen the burden on cable operators, and small operators in particular, to communicate this information every year to each subscriber on an individual basis, while still fulfilling the objectives of Section 632?

16. On the other hand, would a website posting of initial and annual notices required pursuant to Section 76.1602 and information on basic tier availability required pursuant to Section 76.1618 ensure that subscribers are adequately informed? The Commission recently observed that "[t]he Internet has become a major part of consumers' daily lives and now represents a widely used medium to obtain information."<sup>55</sup> However, in the *2017 Declaratory Ruling*, the Commission rejected the request of the petitioners in that proceeding to permit electronic delivery of annual notices via other means reasonably calculated to reach the individual customer, and instead limited permissible electronic delivery to e-mail.<sup>56</sup> The Commission explained that allowing other means to deliver annual notices, such as placing a website link inside a bill, "could create an undue risk that subscribers will not receive the required notices."<sup>57</sup> Can the Commission's concerns be mitigated by putting some consumer safeguards or additional requirements in place? Further, are there any requirements that the Commission can adopt to help ensure that subscribers without Internet access receive the required notices? For example, if cable operators were permitted to include a website link to these notices inside a bill, should we also require

<sup>53</sup> 47 CFR §§ 76.1602, 76.1618. *See supra* para. 2.

<sup>54</sup> With respect to initial and annual notices, NCTA notes that this detailed information "appears to be of little utility to customers and can become frequently outdated," and that website posting would enable operators to provide more timely information in a less burdensome manner. NCTA Comments at 5-6. With respect to notice of the availability of the basic service tier, NCTA asserts that most customers would instinctively turn to the cable operator's website for information about programming packages and channel lineups. *Id.* at 8-9. *See also* ACA Comments at 23 ("[T]he Commission should consider modifying its rules to allow cable operators to decide how best to convey statutorily mandated information about the basic tier to customers."). Frontier agrees that cable operators should be allowed to share any required annual information by posting the information on its website, giving subscribers the opportunity to opt in to e-mail notification. Frontier Reply at 7. While acknowledging that, for the most part, the notices convey "important information for consumers to have," ACA questions the benefit of delivering the information year after year. ACA Comments at 20.

<sup>55</sup> *Amendment of Section 73.624(g) of the Commission's Rules Regarding Submission of FCC Form 2100, Schedule G, Used to Report TV Stations' Ancillary or Supplementary Services; Amendment of Section 73.3580 of the Commission's Rules Regarding Public Notice of the Filing of Broadcast Applications; Modernization of Media Regulation Initiative; Revision of the Public Notice Requirements of Section 73.3580*, Notice of Proposed Rulemaking, 32 FCC Rcd 8203, 8208-09, paras. 8-9 (2017) (seeking comment on whether to update Section 73.3580 of the Commission's rules to provide broadcast licensees with more flexibility as to how they inform the public about the filing of certain applications, including whether to allow posting of such notice on an Internet website).

<sup>56</sup> *2017 Declaratory Ruling*, 32 FCC Rcd at 5276, para. 11.

<sup>57</sup> *Id.*

them to include a telephone number that subscribers can use to request a paper copy of the notices?

17. To the extent that the Commission does decide to permit website posting of these two Subpart T notices, we seek comment on what requirements should be adopted to ensure this information can be easily accessed by consumers. For example, should the Commission require that an electronic link to written material posted on a cable operator's website be clearly labeled "Important Subscriber Notices" and be prominently displayed on the initial screen of the cable operator's website? This would allow subscribers to easily locate the pertinent written material without having to search the website. Should any website link containing generic written material include an opt-out mechanism that allows subscribers to identify their delivery preferences? Should the Commission specify that the link must allow a subscriber to find the same information that would be included in the paper copies delivered to the subscriber's physical address or delivered by e-mail to a verified e-mail address? We seek comment on these or any other consumer protections that would be appropriate to impose in conjunction with website posting to ensure that consumers effectively receive the required notifications.

18. Finally, as suggested by NCTA,<sup>58</sup> we tentatively conclude that we should add a rule in Subpart T that specifies that subscriber privacy notifications required pursuant to Sections 631, 338(i), and 653 of the Act may be delivered electronically to a verified e-mail address, subject to the consumer safeguards discussed above. Section 631 of the Act requires a cable operator to "provide notice in the form of a separate, written statement to such subscriber which clearly and conspicuously informs the subscriber of" certain privacy protections.<sup>59</sup> Section 338(i) of the Act imposes the same requirement on satellite providers and Section 653(c)(1)(A) of the Act imposes this requirement on Open Video System (OVS) providers.<sup>60</sup> We tentatively conclude that the Commission should interpret the term "separate, written statement" in these statutory provisions to include notices delivered electronically to a verified e-mail address and that the Commission should add a rule to Subpart T codifying this interpretation. We seek comment on whether subscribers should have to opt in to begin receiving electronic privacy notices. Or, alternatively, should these notifications be treated like the other ones in Subpart T such that MVPDs should be permitted to deliver them electronically, if they allow consumers to opt out of e-mail delivery and continue to receive paper notices? We recognize the importance of privacy protections to video subscribers, which are reflected in Sections 631, 338(i), and 653(c)(1)(A). Are there concerns underlying the privacy notification requirements that suggest those requirements should be treated differently from other subscriber notifications?

## **2. Responses to Consumer Requests and Complaints by E-Mail**

19. We propose to allow cable operators to respond to consumer requests or billing dispute complaints by e-mail, if the consumer used e-mail to make the request or complaint or if the consumer specifies e-mail as the preferred delivery method in the request or complaint, and we seek comment on

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<sup>58</sup> See NCTA Comments at 9. Although NCTA's comments discuss only the privacy notifications applicable to cable operators pursuant to Section 631, we find it appropriate to also address similar statutory provisions applicable to other types of MVPDs.

<sup>59</sup> 47 U.S.C. § 551(a)(1). Specifically, Section 631 requires annual notice of "(A) the nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information; (B) the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made; (C) the period during which such information will be maintained by the cable operator; (D) the times and place at which the subscriber may have access to such information in accordance with subsection (d) [of this section]; and (E) the limitations provided by this section with respect to the collection and disclosure of information by a cable operator and the right of the subscriber under subsections (f) and (h) [of this section] to enforce such limitations." *Id.*

<sup>60</sup> *Id.* §§ 338(i), 573(c)(1)(a); 47 CFR § 76.1510.

this proposal.<sup>61</sup> Sections 76.1614 and 76.1619 of Subpart T require written responses to requests or complaints.<sup>62</sup> Specifically, Section 76.1614 requires cable operators to respond in writing within 30 days to any written request by any person for the identification of the signals carried on its system in fulfillment of the must-carry requirements of Section 76.56.<sup>63</sup> Section 76.1619 requires cable operators to respond to a written complaint from a subscriber within 30 days if there is a billing dispute.<sup>64</sup> We seek comment on whether there are any other provisions in Subpart T that would be affected by this proposal.

20. NCTA asks the Commission to clarify that cable providers may use e-mail to respond to consumer complaints when the consumer “has provided an e-mail address on the complaint form and has not specifically requested a different format.”<sup>65</sup> According to NCTA, “[a]n electronic submission implicitly and reasonably calls for an electronic response.”<sup>66</sup> NCTA also points out that the Commission already permits common carriers and Internet service providers to respond to formal complaints by e-mail.<sup>67</sup> Likewise, Frontier calls on the Commission to allow cable providers to use e-mail to respond to consumer complaints when the consumer has provided an e-mail address on the complaint form or if the provider has an e-mail address on record.<sup>68</sup> Frontier contends that this would “cut down on unnecessary paper waste and postage and remove unnecessary costs.”<sup>69</sup>

21. We believe that permitting cable operators to respond electronically using the same method as the consumer or the method chosen by the consumer gives both parties the opportunity to communicate via their method of choice and will allow cable operators to respond more efficiently to requests and complaints. We seek comment on this proposal.

### 3. Other Subpart T Requirements

22. *Section 76.1621 (Equipment Compatibility Offer).*<sup>70</sup> We propose to eliminate Section

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<sup>61</sup> See Appendix A, Proposed Rules, Section 76.1600(f). Our proposal is limited to responses to consumer complaints or requests, and does not extend to communications between cable operators and other parties, such as broadcast stations.

<sup>62</sup> See 47 CFR §§ 76.1614, 76.1619.

<sup>63</sup> *Id.* § 76.1614.

<sup>64</sup> *Id.* § 76.1619.

<sup>65</sup> NCTA Comments at 10.

<sup>66</sup> *Id.* at 11.

<sup>67</sup> *Id.* at 10-11 (citing 47 CFR § 1.735(f) (permitting answers to formal complaints against common carriers to be delivered by e-mail); and § 8.13(c)(1) (permitting the same for formal complaints regarding open Internet rules)). NCTA also notes that this would be consistent with prior guidance from the Consumer and Governmental Affairs Bureau allowing providers to submit responses to informal complaints against common carriers via e-mail. *Id.* at 11, n.30.

<sup>68</sup> Frontier Reply at 15.

<sup>69</sup> *Id.* Frontier also notes that letter or e-mail communication is frequently made in addition to communication via other means, including by phone for “the most pressing and important complaints.” *Id.* at 15-16.

<sup>70</sup> ACA and NCTA request that the Commission delete Section 76.1630 of the Commission’s rules, which requires cable operators and other multichannel video programming distributors (MVPDs) to provide subscribers with notices about the digital transition in monthly bills or bill notices received by subscribers beginning April 1, 2009 and concluding on June 30, 2009. See 47 CFR § 76.1630; ACA Comments at 26; NCTA Comments at 9. We plan to address this in a subsequent order in the Modernization of Media Regulation Initiative proceeding. NCTA and Frontier also request that the Commission eliminate or revise the requirements for cable operators to provide subscribers with notice of certain rate changes in Sections 76.1603 and 76.1604 of the Commission’s rules. See NCTA Comments at 6-8; Frontier Reply at 8-9. We plan to address these issues in a subsequent proceeding.

76.1621, which requires cable operators to offer and provide upon request to subscribers “special equipment that will enable the simultaneous reception of multiple signals.”<sup>71</sup> We seek comment on whether the requirements in Section 76.1621 can be eliminated consistent with Section 624A of the Act.<sup>72</sup> NCTA argues the Commission should eliminate this requirement because it is a “relic[] of long-outdated technologies and policies.”<sup>73</sup> When the Commission adopted the requirement for cable operators to offer subscribers special equipment with multiple tuners, it was intended to address “cases where cable systems use scrambling technology and set-top boxes,” such that subscribers need “supplemental equipment to enable the operation of extended features and functions of TV receivers and VCRs that make simultaneous use of multiple signals,” including “picture-in-picture” features or the ability to watch one program while recording another.<sup>74</sup> Today, consumers widely use digital video recorders (DVRs), rather than VCRs or television receivers, for recording features, and “picture-in-picture” features on television receivers are not prevalent. Given today’s digital technologies, we tentatively conclude that it is no longer necessary to promote the “special equipment that will enable the simultaneous reception of multiple signals” referred to in the rules, and we seek comment on this tentative conclusion.

23. *Section 76.1622 (Consumer Education Program on Compatibility).*<sup>75</sup> We seek comment on how to appropriately update references to technology in Section 76.1622 of the Commission’s rules, which requires cable operators to provide a consumer education program on equipment and signal compatibility matters to their subscribers in writing upon initial subscription and annually thereafter.<sup>76</sup> Among other types of technology, the rule refers to the compatibility of “videocassette recorders.”<sup>77</sup> Frontier asks the Commission to update Section 76.1622, noting that a requirement to educate consumers on the interoperability of videocassette recorders no longer makes sense.<sup>78</sup> ACA emphasizes that “[c]oncerns about TV receiver and VCR compatibility are, quite simply, no longer relevant to today’s consumer.”<sup>79</sup> We seek comment on how we can best modernize references to technology in Section 76.1622.<sup>80</sup> We also seek comment on whether there are any parts of the rule that are no longer necessary

<sup>71</sup> See 47 CFR § 76.1621; *supra* para. 2.

<sup>72</sup> See 47 U.S.C. § 544a(c)(2). Section 624A specifies that the Commission “shall periodically review and, if necessary, modify the regulations issued pursuant to this section in light of any actions taken in response to such regulations and to reflect improvements and changes in cable systems, television receivers, video cassette recorders, and similar technology.” See *id.* § 544a(d).

<sup>73</sup> NCTA Comments at 9.

<sup>74</sup> See *Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992; Compatibility Between Cable Systems and Consumer Electronics Equipment*, First Report and Order, 9 FCC Rcd 1981, 1989-90, paras. 43-48 (1994). See also 47 U.S.C. § 544a(c)(2); *Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992; Compatibility Between Cable Systems and Consumer Electronics Equipment*, Memorandum Opinion and Order, 11 FCC Rcd 4121 (1996).

<sup>75</sup> See *supra* para. 2 for a detailed description of the requirements in this rule.

<sup>76</sup> 47 CFR § 76.1622.

<sup>77</sup> See *id.*

<sup>78</sup> Frontier Reply at 7-8.

<sup>79</sup> ACA Comments at 25.

<sup>80</sup> ACA asserts that Section 624A of the Act references outdated technology, specifically requiring the Commission to prescribe regulations with respect to the compatibility of “videocassette recorders.” *Id.* at 23-24; 47 U.S.C. § 544a(c)(2). However, as ACA notes, the statute also directs the Commission to periodically review and, if necessary, modify its regulations with regard to consumer education about equipment compatibility “to reflect improvements and changes in cable systems, television receivers, video cassette recorders, and similar technology.” See 47 U.S.C. § 544a(d); ACA Comments at 24, n.93.

given changes in technology and, therefore, should be eliminated.<sup>81</sup> We seek comment on whether the requirements in Section 76.1622 can be modified consistent with Section 624A of the Act, and, if so, how.<sup>82</sup>

24. Further, we seek comment on whether the Commission should consider any other changes to Section 76.1622, such as scaling back the requirement to provide these types of notices annually. ACA asks the Commission to eliminate those parts of the rule that are not mandated by statute, such as the requirement to provide this information to subscribers at the time of subscription and then annually thereafter, and to give cable operators greater flexibility in determining when and how to notify subscribers about equipment compatibility issues.<sup>83</sup> ACA argues that the redundancy of annual notices “is no longer necessary, especially now that technology has moved far beyond what was considered cutting edge at the time the statute was enacted, and the equipment compatibility problems the requirement was designed to solve are no longer pervasive.”<sup>84</sup> We seek comment on whether the Commission should grant cable operators more flexibility with respect to these notices, as suggested by ACA.

#### B. Carriage Election Notices

25. We seek comment on how to revise Sections 76.64(h) and 76.66(d) of our rules to permit television broadcast stations to use alternative means of notifying MVPDs about their carriage elections. Currently, the rules direct each television broadcast station to provide notice every three years, via certified mail, to each cable system or DBS carrier serving its market regarding whether it is electing to demand carriage (“must carry” or “mandatory carriage”), or to withhold carriage pending negotiation (“retransmission consent”).<sup>85</sup> The DBS rule also states that the certified mail letter be “return receipt requested.”<sup>86</sup> The Commission “believe[d] that certified mail, return receipt requested [was] the preferred method to ensure that broadcast stations [were] able to demonstrate that they submitted their elections by

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<sup>81</sup> See NCTA Comments at 9 (arguing that the Commission should eliminate Section 76.1622 because it is a “relic[] of long-outdated technologies and policies” and addresses “equipment that no longer is routinely used by consumers”). Section 624A directs the Commission to “include such regulations *as are necessary*” to notify subscribers of certain consumer electronics equipment compatibility issues. See 47 U.S.C. § 544a(c)(2) (emphasis added).

<sup>82</sup> See 47 U.S.C. § 544a(c)(2). Section 624A(c)(2) states that “[t]he regulations prescribed by the Commission . . . shall include such regulations as are necessary . . . to require cable operators offering channels whose reception requires a converter box—(i) to notify subscribers that they may be unable to benefit from the special functions of their television receivers and video cassette recorders, including functions that permit subscribers . . . to watch a program on one channel while simultaneously using a video cassette recorder to tape a program on another channel; . . . to use a video cassette recorder to tape two consecutive programs that appear on different channels; and . . . to use advanced television picture generation and display features; and . . . (ii) to the extent technically and economically feasible, to offer subscribers the option of having all other channels delivered directly to the subscribers’ television receivers or video cassette recorders without passing through the converter box.” *Id.* § 544a(c)(2)(B). In addition, the statute requires the regulations “to require a cable operator who offers subscribers the option of renting a remote control unit . . . to notify subscribers that they may purchase a commercially available remote control device from any source that sells such devices rather than renting it from the cable operator; and . . . to specify the types of remote control units that are compatible with the converter box supplied by the cable operator.” *Id.* § 544a(c)(2)(E).

<sup>83</sup> ACA Comments at 23-25.

<sup>84</sup> *Id.* at 25.

<sup>85</sup> See *supra* para. 5.

<sup>86</sup> 47 CFR § 76.66(d)(1)(ii).

the required deadline, and that they were received by the satellite carrier.”<sup>87</sup> A number of commenters have proposed changes to this process.<sup>88</sup>

26. We seek comment on what alternative means of serving triennial election notices would satisfy the needs of broadcasters and MVPDs, such as express delivery service or e-mail. Nexstar, among others, suggests that notices could be delivered via e-mail, and AT&T proposes allowing broadcasters to use express delivery services instead of certified U.S. mail.<sup>89</sup> How would these or other approaches work in practice? As discussed above, we have in another context allowed delivery of certain customer notices to a “verified” e-mail address, noting that such a notice will “have a high probability of being successfully delivered electronically to an email address that the customer actually uses, so that the written information is actually provided to the customer.”<sup>90</sup> We seek comment on whether this approach would be sufficient in the context of carriage election notices, where significant legal and financial consequences arise from the failure to make a timely election notice.<sup>91</sup> Is there an electronic equivalent to certified mail? Would the use of express delivery services, as proposed by AT&T, meaningfully reduce burdens on broadcasters? More generally, can we modernize our rules in a way that would minimize the burden on broadcasters, ensure that MVPDs receive the elections in a timely way, and still provide a mechanism by which broadcasters can demonstrate that they met the election deadline with respect to specific cable operators and DBS carriers?

27. Some commenters request that we eliminate the requirement to send election notices to MVPDs by certified mail, and replace it with a mechanism for providing notice of carriage election online.<sup>92</sup> For example, in their joint filing, CBS, Disney, and Univision argue that “[t]he system-by-system election requirement creates inefficiencies, both for broadcasters and cable operators,” incentivizes broadcasters to send duplicative notices, and is time-consuming and costly.<sup>93</sup> They contend that allowing stations to provide notice of elections online “not only would make it easier for broadcasters and cable operators to keep track of elections but also would be consistent with rules applicable in other

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<sup>87</sup> *Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues*, Order on Reconsideration, 16 FCC Rcd 16544, 16576, para. 65 (2001).

<sup>88</sup> See Comments of the National Association of Broadcasters, at 22-23 (NAB Comments); Comments of CBS Corporation, The Walt Disney Company, 21<sup>st</sup> Century Fox, Inc., and Univision Communications Inc., at 10-12 (CBS, Disney, Fox, and Univision Comments); Comments of Nexstar Broadcasting, Inc., at 16-17 (Nexstar Comments); Comments of America’s Public Television Stations et al., at 15 (APTS Comments); Comments of Meredith Corporation, at 2; Reply Comments of the ABC Television Affiliates Association, CBS Television Network Affiliates Association, and FBC Television Affiliates Association, at 10-11; Joint Reply Comments of the Named State Broadcasters Associations, at 7-8; Reply Comments of AT&T, at 5-6 (AT&T Reply). Although some of these commenters proposed even broader changes to the must carry/retransmission consent system, in this docket we are focused exclusively on notice issues.

<sup>89</sup> Nexstar Comments at 16-17; AT&T Reply at 5-6.

<sup>90</sup> See *supra* note 44 and accompanying text.

<sup>91</sup> A failure to deliver a timely carriage election notice to a cable operator means that station defaults to must carry with respect to that operator, and loses the ability to negotiate for compensation for carriage of the station during that three-year election cycle. 47 CFR § 76.64(f)(3). See also ACA Reply at 13 (arguing that continued reliance on certified mail is essential). On the DBS side, a failure to deliver a timely carriage election notice has the opposite effect, meaning the station defaults to retransmission consent and loses the ability to demand carriage during that three-year election cycle. 47 CFR § 76.66(d)(1)(v). See also APTS Comments at 14-15.

<sup>92</sup> See, e.g., NAB Comments at 22-23; CBS, Disney, Fox, and Univision Comments at 11-12.

<sup>93</sup> CBS, Disney, Fox, and Univision Comments at 11.

contexts and in line with the Commission's recent shift toward Internet-based solutions."<sup>94</sup> We seek comment on the pros and cons of this approach. In particular, what are the specific benefits to and burdens for both broadcasters and MVPDs of such an approach? Further, what rule changes would the Commission need to make to effectuate online notice of elections? For example, should all broadcasters be required to make carriage elections online or would this be one of their options in addition to the existing mechanism? Under an online election approach, how would broadcasters differentiate their elections to the extent they wish to make different elections vis-à-vis different MVPDs? Finally, would these online carriage elections be placed in the broadcasters' online public file or on another (existing or new) website that is publicly accessible?

#### IV. PROCEDURAL MATTERS

##### A. Initial Regulatory Flexibility Analysis

28. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>95</sup> the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) relating to this NPRM. The IRFA is set forth in Appendix B.

##### B. Initial Paperwork Reduction Act Analysis

29. This document may result in new or revised information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. §§ 3501 through 3520). If the Commission adopts any new or revised information collection requirement, the Commission will publish a notice in the *Federal Register* inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. §§ 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), the Commission seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

##### C. Ex Parte Rules

30. Permit-But-Disclose. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>96</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing

<sup>94</sup> *Id.* at 11-12. *But see* AT&T Reply at 4-5 (arguing that this approach does not minimize burdens – it simply shifts them).

<sup>95</sup> *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

<sup>96</sup> 47 CFR §§ 1.1200 *et seq.*

oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

#### **D. Filing Requirements**

31. **Comments and Replies.** Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> Street, SW, TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington, DC 20554.

32. **Availability of Documents.** Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, CY-A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

33. **People with Disabilities.** To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

#### **E. Additional Information**

34. For additional information on this proceeding, contact Maria Mullarkey, [Maria.Mullarkey@fcc.gov](mailto:Maria.Mullarkey@fcc.gov), or Katie Costello, [Katie.Costello@fcc.gov](mailto:Katie.Costello@fcc.gov), of the Policy Division, Media Bureau, (202) 418-2120.

#### **V. ORDERING CLAUSES**

35. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 1, 4(i), 4(j), 325, 338, 624A, 631, 632, and 653 of the Communications Act of 1934, as amended, 47 U.S.C. §§



151, 154(i), 154(j), 325, 338, 544a, 551, 552, and 573 this Notice of Proposed Rulemaking **IS ADOPTED.**

36. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A****Proposed Rules**

Part 76 of the Commission's rules is amended as follows:

**PART 76 – MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE**

1. The authority for Part 76 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Add new Section 76.1600 to read as follows:

**§ 76.1600 Electronic delivery of notices.**

(a) Written information, notices, advisements or offers that are generic in nature and provided in writing by cable operators to subscribers or customers pursuant to this Subpart T, as well as subscriber privacy notifications required by cable operators, satellite providers, and open video systems pursuant to Sections 631, 338(i), and 653 of the Communications Act, may be delivered electronically by e-mail if the entity:

(1) sends the written material to the subscriber's verified e-mail address, and

(2) provides a mechanism to allow subscribers to continue to receive paper copies of the written material.

(b) For purposes of this section, a verified e-mail address is defined as:

(1) an e-mail address that the subscriber has provided to the cable operator (and not vice versa) for purposes of receiving communication,

(2) an e-mail address that the subscriber regularly uses to communicate with the cable operator, or

(3) an e-mail address that has been confirmed by the subscriber as an appropriate vehicle for the delivery of notices.

(c) The term "generic" means information that applies to subscribers or groups of subscribers generally (*e.g.*, those residing in the same zip code; those subscribing to the same service, etc.) and is not specific to an individual subscriber.

(d) For notices that require an opt-out mechanism, the entity must include, in the body of the originating e-mail that delivers the written material, a mechanism for the subscriber to opt out of e-mail delivery that is clearly and prominently presented to subscribers so that it is readily identifiable as an opt-out mechanism. The mechanism may be either:

(1) an opt-out telephone number, or

(2) an electronic link that allows subscribers to identify their delivery preferences electronically.

(e) If the conditions for electronic delivery in subsections (a) through (d) are not met, or if a subscriber opts out of electronic delivery, the written material must be delivered by paper copy to the subscriber's physical address.

(f) In this Subpart T, any required written response to a subscriber or customer may be delivered by e-mail, if the consumer used e-mail to make the request or complaint or if the consumer specifies e-mail as the preferred delivery method in the request or complaint.

(g) This section applies only to written information, notices, advisements, offers or responses provided to subscribers or customers and does not affect communications between cable operators and other parties addressed in this Subpart T.

3. Delete § 76.1621.

**APPENDIX B****Initial Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

**A. Need for, and Objectives of, the Proposed Rules**

2. This NPRM addresses ways to modernize certain notice provisions in Part 76 of the Federal Communications Commission's rules governing multichannel video and cable television service. First, the NPRM seeks comment on proposals to modernize the rules in Subpart T of Part 76 (Subpart T),<sup>4</sup> which sets forth notice requirements applicable to cable operators. In particular, the NPRM proposes to allow various types of written communications from cable operators to subscribers to be delivered electronically, if they are sent to a verified e-mail address and the cable operator complies with other consumer safeguards. The NPRM also tentatively concludes that subscriber privacy notifications required pursuant to Sections 631, 338(i), and 653 of the Communications Act of 1934, as amended (the Act), may be delivered electronically to a verified e-mail address, subject to consumer safeguards. In addition, the NPRM proposes to permit cable operators to reply to consumer requests or complaints by e-mail in certain circumstances. Second, the NPRM seeks comment on how to update the requirement in Sections 76.64 and 76.66 of the Commission's rules that requires broadcast television stations to send carriage election notices via certified mail.

**B. Legal Basis**

3. The proposed action is authorized pursuant to sections 1, 4(i), 4(j), 325, 338, 624A, 631, 632, and 653 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 325, 338, 544a, 551, 552, and 573.

**C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply**

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>5</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>6</sup> In addition, the term "small business" has the

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (CWAAA).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> See *id.*

<sup>4</sup> 47 CFR §§ 76.1601-76.1630.

<sup>5</sup> 5 U.S.C. § 603(b)(3).

<sup>6</sup> *Id.* § 601(6).

same meaning as the term “small business concern” under the Small Business Act.<sup>7</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>8</sup> Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

5. *Cable Companies and Systems (Rate Regulation Standard)*. The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers, nationwide.<sup>9</sup> Industry data indicate that, of 1,076 cable operators nationwide, all but 11 are small under this size standard.<sup>10</sup> In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers.<sup>11</sup> Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000-19,999 subscribers.<sup>12</sup> Thus, under this second size standard, the Commission believes that most cable systems are small.

6. *Cable System Operators*. The Act also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”<sup>13</sup> The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.<sup>14</sup> Industry data indicate that, of 1,076 cable operators nationwide, all but 10 are small under this size standard.<sup>15</sup> We note that the Commission neither requests nor collects information on whether

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<sup>7</sup> *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

<sup>8</sup> 15 U.S.C. § 632.

<sup>9</sup> 47 CFR § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

<sup>10</sup> These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, “Top 25 Cable/Satellite Operators,” pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, “Ownership of Cable Systems in the United States,” pages D-1805 to D-1857.

<sup>11</sup> 47 CFR § 76.901(c).

<sup>12</sup> Warren Communications News, *Television & Cable Factbook 2008*, “U.S. Cable Systems by Subscriber Size,” page F-2 (data current as of Oct. 2007). The data do not include 851 systems for which classifying data were not available.

<sup>13</sup> 47 U.S.C. § 543(m)(2); *see also* 47 CFR § 76.901(f) & nn.1–3.

<sup>14</sup> 47 CFR § 76.901(f); *see FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (Cable Services Bureau 2001).

<sup>15</sup> These data are derived from R.R. BOWKER, *BROADCASTING & CABLE YEARBOOK 2006*, “Top 25 Cable/Satellite Operators,” pages A-8 & C-2 (data current as of June 30, 2005); WARREN COMMUNICATIONS NEWS, *TELEVISION & CABLE FACTBOOK 2006*, “Ownership of Cable Systems in the United States,” pages D-1805 to D-1857.

cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,<sup>16</sup> and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

7. *Open Video Services.* Open Video Service (OVS) systems provide subscription services.<sup>17</sup> The open video system framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.<sup>18</sup> The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,<sup>19</sup> OVS falls within the SBA small business size standard covering cable services, which is “Wired Telecommunications Carriers.”<sup>20</sup> The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.<sup>21</sup> To gauge small business prevalence for the OVS service, the Commission relies on data currently available from the U.S. Census for the year 2012. According to that source, there were 3,117 firms that in 2012 were Wired Telecommunications Carriers. Of these, 3,059 operated with less than 1,000 employees. Based on this data, the majority of these firms can be considered small.<sup>22</sup> In addition, we note that the Commission has certified some OVS operators, with some now providing service.<sup>23</sup> Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS franchises.<sup>24</sup> The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities. The Commission further notes that it has certified approximately 45 OVS operators to serve 116 areas, and some of these are currently providing service.<sup>25</sup> Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

8. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and

<sup>16</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission’s rules.

<sup>17</sup> See 47 U.S.C. § 573.

<sup>18</sup> 47 U.S.C. § 571(a)(3)-(4). See *13th Annual Report*, 24 FCC Rcd at 606, para. 135.

<sup>19</sup> See 47 U.S.C. § 573.

<sup>20</sup> U.S. Census Bureau, 2012 NAICS Definitions, 517110 Wired Telecommunications Carriers, <http://www.census.gov/naics/2012/def/ND517110.HTM#N517110>.

<sup>21</sup> 13 CFR § 201.121, NAICS code 517110 (2012).

<sup>22</sup> See U.S. Census Bureau, Table EC1251SSSZ5, <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t#none>.

<sup>23</sup> A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovsr.html>.

<sup>24</sup> See *13th Annual Report*, 24 FCC Rcd at 606-07 para. 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

<sup>25</sup> See <http://www.fcc.gov/encyclopedia/current-filings-certification-open-video-systems> (current as of July 2012).

distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA's broad economic census category, "Wired Telecommunications Carriers,"<sup>26</sup> which was developed for small wireline firms.<sup>27</sup> Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.<sup>28</sup> Census data for 2012 indicate that in that year there were 3,117 firms operating businesses as wired telecommunications carriers. Of that 3,117, 3,059 operated with 999 or fewer employees. Based on this data, we estimate that a majority of operators of SMATV/PCO companies were small under the applicable SBA size standard.<sup>29</sup>

9. *Direct Broadcast Satellite (DBS) Service.* DBS Service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic dish antenna at the subscriber's location. DBS is now included in SBA's economic census category "Wired Telecommunications Carriers." The Wired Telecommunications Carriers industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.<sup>30</sup> The SBA determines that a wireline business is small if it has fewer than 1500 employees.<sup>31</sup> Census data for 2012 indicate that 3,117 wireline companies were operational during that year. Of that number, 3,083 operated with fewer than 1,000 employees.<sup>32</sup> Based on that data, we conclude that the majority of wireline firms are small under the applicable standard. However, currently only two entities provide DBS service, which requires a great deal of capital for operation: DIRECTV (owned by AT&T) and DISH Network.<sup>33</sup> DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, we must conclude that internally developed FCC data are persuasive that in general DBS service is provided only by large firms.

10. *Television Broadcasting.* This Economic Census category "comprises establishments

<sup>26</sup> See 13 CFR § 121.201, NAICS code 517110 (2012).

<sup>27</sup> Although SMATV systems often use DBS video programming as part of their service package to subscribers, they are not included in Section 340's definition of "satellite carrier." See 47 U.S.C. §§ 340(i)(1) and 338(k)(3); 17 U.S.C. § 119(d)(6).

<sup>28</sup> 13 CFR § 121.201, NAICS code 517110 (2012).

<sup>29</sup> U.S. Census Bureau, Table EC1251SSSZ5, <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t#none>.

<sup>30</sup> See U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>31</sup> NAICS Code 517110; 13 CFR § 121.201.

<sup>32</sup> See U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012; 2012 Economic Census of the United States*, [http://factfinder.census.gov/faces/tableservices/jsp/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ4&prodType=table](http://factfinder.census.gov/faces/tableservices/jsp/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table).

<sup>33</sup> See *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, MB Docket No. 12-203, Fifteenth Report, 28 FCC Rcd 10496, 10507, para. 27 (2013).

primarily engaged in broadcasting images together with sound.”<sup>34</sup> These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.<sup>35</sup> These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having \$38.5 million or less in annual receipts.<sup>36</sup> The 2012 Economic Census reports that 751 firms in this category operated in that year. Of this number, 656 had annual receipts of \$25 million or less, 25 had annual receipts between \$25 million and \$49,999,999, and 70 had annual receipts of \$50 million or more.<sup>37</sup> Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

11. The Commission has estimated the number of licensed commercial television stations to be 1,384.<sup>38</sup> Of this total, 1,264 stations had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on February 24, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 394.<sup>39</sup> The Commission, however, does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

12. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations<sup>40</sup> must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of “small business” requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive.

13. There are also 417 Class A stations.<sup>41</sup> Given the nature of these services, including their limited ability to cover the same size geographic areas as full power stations thus restricting their ability to generate similar levels of revenue, we will presume that these licensees qualify as small entities under the SBA definition. In addition, there are 1,968 LPTV stations and 3,776 TV translator stations. Given

<sup>34</sup> U.S. Census Bureau, 2012 North American Industry Classification System (NAICS) Definitions, “515120 Television Broadcasting,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>35</sup> *Id.*

<sup>36</sup> 13 CFR § 121.201; 2012 NAICS Code 515120.

<sup>37</sup> U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515120 Television Broadcasting), [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ4&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table).

<sup>38</sup> *Broadcast Station Totals as of December 31, 2016*, FCC News Release (rel. Jan. 5, 2017), <https://www.fcc.gov/document/broadcast-station-totals-december-31-2016>.

<sup>39</sup> *Id.*

<sup>40</sup> “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.” 13 CFR § 21.103(a)(1).

<sup>41</sup> *Broadcast Station Totals as of June 30, 2017*, FCC News Release (rel. July 11, 2017).



the nature of these services as secondary and in some cases purely a “fill-in” service, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

**D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

14. As indicated above, this NPRM addresses ways to modernize certain notice provisions in Part 76 of the FCC’s rules governing multichannel video and cable television service. First, the NPRM seeks comment on proposals to modernize the rules in Subpart T of Part 76 (Subpart T),<sup>42</sup> which sets forth notice requirements applicable to cable operators. In particular, the NPRM proposes to allow various types of written communications from cable operators to subscribers to be delivered electronically, if they are sent to a verified e-mail address and the cable operator complies with other consumer safeguards. The NPRM also tentatively concludes that subscriber privacy notifications required pursuant to Sections 631, 338(i), and 653 of the Communications Act may be delivered electronically to a verified e-mail address, subject to consumer safeguards. In addition, the NPRM proposes to permit cable operators to reply to consumer requests or complaints by e-mail in certain circumstances. Second, the NPRM seeks comment on how to update the requirement in Sections 76.64 and 76.66 of the Commission’s rules that requires broadcast television stations to send carriage election notices via certified mail. Through this NPRM, the Commission seeks to minimize the administrative burden on cable television operators, including smaller cable operators, by allowing electronic delivery of certain notices to subscribers, which will reduce the costs and burdens of providing such notices. We anticipate that this will lead to a long-term reduction in reporting, recordkeeping, or other compliance requirements on all cable operators, including small entities.

**E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered**

15. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.”<sup>43</sup>

16. The Commission expects to more fully consider the economic impact on small entities following its review of comments filed in response to the NPRM and this IRFA. Generally, the NPRM seeks comment on: a proposal to adopt a rule allowing generic written communications from cable operators to subscribers required by Subpart T to be delivered to a verified e-mail address; a proposal to require an opt-out mechanism enabling customers to continue receiving paper notices for certain notices, and on whether to require consumers to opt in to electronic delivery for other notices; whether to permit cable operators to provide certain written notices to subscribers by posting the written material on the cable operator’s website; a proposal to adopt a rule specifying that cable, satellite, and open video system subscriber privacy notifications required pursuant to Sections 631, 338(i), and 653 of the Communications Act may be delivered via e-mail, subject to consumer safeguards; a proposal to allow cable operators to respond to consumer requests or billing dispute complaints by e-mail, if the consumer used e-mail to make the request or complaint or if the consumer specifies e-mail as the preferred delivery method in the request or complaint; whether to adopt other proposals to update Subpart T in light of technological advances and market changes in the cable industry; and how to update the requirements that

<sup>42</sup> 47 CFR §§ 76.1601-76.1630.

<sup>43</sup> 5 U.S.C. § 603(c)(1)-(c)(4).

broadcast stations send carriage election notices via certified mail. The Commission has found that electronic delivery of notices would greatly ease the burden of complying with notification requirements for cable operators, including small cable operators, and it is considering alternatives that may further reduce burdens on small entities, such as allowing website posting of certain notices. The Commission's evaluation of the comments filed on these topics as well as on other questions in the NPRM that seek to reduce the burdens placed on small cable operators and other MVPDs will shape the final conclusions it reaches, the final significant alternatives it considers, and the actions it ultimately takes in this proceeding to minimize any significant economic impact that may occur on small entities.

**F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rule**

17. None.

**STATEMENT OF  
CHAIRMAN AJIT PAI**

Re: *Electronic Delivery of MVPD Communications*, MB Docket No. 17-317; *Modernization of Media Regulation Initiative*, MB Docket No. 17-105

Even in the digital age, many of us remain all too familiar with paper. One example is “bill inserts”—the extra sheets of paper that are stuck in the envelope along with your bill for a particular service. Other than those who struggle to decipher them, most consumers simply ignore them. And these days, we tend to prefer electronic communications over pulp.

The FCC too shares that preference. We’re working to reduce our use of paper. And we’re also aiming to modernize rules that unnecessarily require the private sector to stuff paper into your mailbox. This *Notice* is another step down that path. We propose to take the consumer-friendly step of allowing video companies—multichannel video programming distributors (MVPDs), as they’re called around here—to send certain notices to subscribers electronically.

If it’s finalized, this proposal could allow consumers to more readily access information about their service in the form they find most convenient. And it would get rid of a lot of environmental waste and reduce unnecessary regulatory costs, too.

There’s a similar issue lurking about in one of our rules, and we seek public input in this *Notice* on it too. Today, broadcast television stations have to send MVPDs a notice telling them whether they’re opting for must-carry of their content or retransmission consent. They have to send a separate election notice to each cable system or satellite carrier individually, by certified mail. This doesn’t seem to be necessary or efficient, so we’re looking into how to streamline this notice requirement while still ensuring that MVPDs get the information they need.

I’d like to thank Steve Broecker, Michelle Carey, Katie Costello, Martha Heller, Maria Mullarkey, and Mary Beth Murphy of the Media Bureau, and Susan Aaron and Dave Konczal from the Office of General Counsel, for your efforts on this *Notice*.

**STATEMENT OF  
COMMISSIONER MIGNON L. CLYBURN**

Re: *Electronic Delivery of MVPD Communications*, MB Docket No. 17-317; *Modernization of Media Regulation Initiative*, MB Docket No. 17-105

Have you ever felt that you need to get an advanced degree to even come close to interpreting your monthly cable bill? Between annual price hikes, channel lineup changes, and mysteriously labeled fees, rest assured, you are not alone in your frustration.

According to one analyst, between 2011 to 2015, the average cable bill increased nearly eight times the rate of inflation. Compounding this is the increasing use of below-the-line fees, a strategy that the FCC's 18<sup>th</sup> Annual Video Competition Report described as "rais[ing] monthly bills while typically leaving the advertised prices for video packages unchanged."

Let's be honest, there are some providers that stand to benefit from a state of confusion, which is why the Commission's rules require them to notify their customers in writing of specific information, including rate and service changes; charges for customer service changes; and basic tier availability.

And in a world in which many consumers prefer to receive their monthly bill electronically, it is reasonable for us to consider whether our rules should be modernized to allow these currently required written notifications to be delivered in the same manner in which a bill is received by the customer. What I fear, however, is that if providers are allowed to switch the mode by which this information is delivered, without the consumer's consent, it would give the provider another way to mask price increases and service changes.

It is essential that consumers, not the companies providing the service, be empowered with the choice of how these notifications are delivered, particularly when it comes to how much they pay for monthly service. As originally circulated, the Chairman's proposal would have allowed companies to solely make this decision on behalf of their customers – a move I found troubling.

So I am pleased that my colleagues agreed to scale this section back, by seeking comment on whether the move to electronic notification should be done on an opt in basis by the consumer. As we seek to modernize the delivery of cable communications, we must ensure that it is done in a way that puts #ConsumersFirst.

My thanks to my colleagues and the Media Bureau staff for your work on this item.

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

Re: *Electronic Delivery of MVPD Communications*, MB Docket No. 17-317; *Modernization of Media Regulation Initiative*, MB Docket No. 17-105

I am pleased that the Commission continues its pursuit of addressing outdated cable regulations. Last month, when we launched a proceeding that I hope will result in the end of the Form 325, I encouraged the Commission to think bigger and address more obsolete regulations in each NPRM. I also encouraged the Commission to consider clarifying in our rules that “written” notice can be electronic notice and to consider alternative notices for retransmission consent elections other than certified mail. This item meets that challenge.

It is time that our rules reflect that consumer desire for information has gone digital. There are many occasions when emailing a consumer is more appropriate and reflective of how the public communicates today than using the antiquated Postal Service. This item tentatively concludes that various requirements on cable operators to provide generic “written” communications to subscribers can be interpreted to include electronic delivery.

When it comes to annual notices, rather than just having the option of delivering by mail or electronic means, I support allowing companies to post the requisite links on their websites. For the consumer who wants this information, this is a logical place to find it. For the consumer that does not, why clutter their mailbox or inbox? I am pleased to see that this item considers what steps will be needed to permit electronic delivery of annual notices via other means reasonably calculated to reach the individual consumer. I hope as we move to a final order this approach will be permitted.

Finally, I was pleased to see the Commission consider revising our rules on broadcast carriage election notification. Under our current rules, broadcasters must send MVPDs notice of their decision to opt into retransmission consent versus must-carry via certified mail. We ask in today’s item how to revise our rules and what alternative means are available to serve these triennial election notices. I thank the Chairman for accepting my edits to bolster this section and hope we can quickly move to a final order on this topic as well. The retransmission consent process is often contentious enough without having to fight over whether documents were appropriately mailed.

For these reasons, I support today’s item. Next year, I trust we can move to final orders on the topics we have teed up and continue clearing out the regulatory underbrush. I am also eager to begin looking at some of the more substantive ideas proposed in the record. Overall, our media modernization proceeding has shed light on a number of burdens that have outlived their usefulness and I thank the Chairman for his attention to this topic.

**STATEMENT OF  
COMMISSIONER BRENDAN CARR**

Re: *Electronic Delivery of MVPD Communications*, MB Docket No. 17-317; *Modernization of Media Regulation Initiative*, MB Docket No. 17-105

This year, the FCC has made significant strides in modernizing outdated rules and reducing unnecessary paperwork burdens. This effort has been particularly welcome when it comes to the FCC's media regulations, which have languished without update for far too long. Take the FCC's Part 76 rules, which we tee up in today's Notice of Proposed Rulemaking. These rules regulate cable operators' communications with their subscribers. But those rules are stuck in the snail mail era—requiring providers to send written notices to consumers even when email is a more efficient and cost-effective means and one that the consumer prefers.

Allowing cable operators to communicate with their subscribers electronically is long overdue. So I support today's Notice. It contains commonsense proposals that will decrease paperwork burdens, especially for smaller cable providers, while ensuring that consumers receive information in the way they find most helpful.

I want to thank the Media Bureau for its work on this item.