

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
Petition for Declaratory Ruling Clarifying )  
that Notices Required by Section 76.1602(b) ) MB Docket No. \_\_\_\_  
May Be Distributed by Email )

To: Chief, Media Bureau

**PETITION FOR DECLARATORY RULING OF NCTA AND ACA**

The National Cable & Telecommunications Association (“NCTA”) and the American Cable Association (“ACA”) respectfully request, pursuant to Section 1.2 of the Commission’s rules,<sup>1</sup> that the Media Bureau issue a declaratory ruling clarifying the “written information” requirement of Section 76.1602(b) of the Commission’s rules encompasses electronic writings.<sup>2</sup> Specifically, we seek a ruling that electronic dissemination by email to subscribers for whom a cable operator has a confirmed email address, by the provision of appropriately-noticed links to websites, or by other electronic measures reasonably calculated to reach individual customers, satisfies the requirement if the information is also available in print upon customer request.

**INTRODUCTION**

Businesses and consumers increasingly prefer the efficiency, effectiveness, and ease of electronic communications. For these reasons, among many others, an ever-growing percentage of communications between businesses and consumers are conducted electronically rather than through print and “snail mail.” Many of the transactions that previously were conducted in hard-copy form have moved from paper to email and other electronic means of communication over

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<sup>1</sup> 47 C.F.R. § 1.2.

<sup>2</sup> 47 C.F.R. § 76.1602(b).

the past several years, including not only for notices but also for the establishment of contractual relationships. The Commission has embraced this trend in multiple contexts, and the Bureau should do so with regard to the routine notices required by Section 76.1602(b) of the Commission's rules.

Section 76.1602(b) of the Commission's rules requires that cable operators:

“provide *written information* on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request: (1) Products and services offered; (2) Prices and options for programming services and conditions of subscription to programming and other services; (3) Installation and service maintenance policies; (4) Instructions on how to use the cable service; (5) Channel positions of programming carried on the system; (6) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office [; and] (7) . . . any assessed fees for rental of navigation devices and single and additional CableCARDS . . . .”<sup>3</sup>

In addition, to the extent a cable operator “includes equipment in the price of a bundled offer of one or more services,” the notice required by Section 76.1602(b) must also specify “the fees reasonably allocable to: (i) The rental of single and additional CableCARDS; and (ii) The rental of operator-supplied navigation devices.”<sup>4</sup>

Most cable operators still disseminate the “written information” required by Section 76.1602(b) in hard copy, as they have since the rule was first adopted over 20 years ago. As a consequence, the cable industry uses hundreds of millions of pages of paper *annually* to disseminate information that few subscribers read and virtually none are likely to retain. By clarifying that the written notices in Section 76.1602(b) may be provided electronically as described below, the Bureau would eliminate this environmental waste; modernize its rules to meet consumer expectations to receive communications electronically; improve communications

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<sup>3</sup> 47 C.F.R. § 76.1602(b) (emphasis added).

<sup>4</sup> 47 C.F.R. § 76.1602(b)(8).

between cable operators and their customers, including by enhancing the ease and speed with which notices can be updated or corrected; and afford cable operators greater flexibility to match the electronic operations of their online and other competitors.

**THE COMMISSION SHOULD CLARIFY THAT ELECTRONIC DELIVERY OF SECTION 76.1602(B) NOTICES IS PERMITTED**

At the outset, it bears emphasis that the Commission long ago recognized the need for a flexible approach to its requirements for written notice. In two decisions implementing the Telecommunications Act of 1996, the Commission determined that, consistent with Section 632(c) of the Communications Act,<sup>5</sup> the written notice required by Section 76.1603 – which pertains to changes in rates, programming services, or channel positions – can be effectuated through publications in newspapers.<sup>6</sup> The notices contemplated by Section 76.1603 clearly are more consequential to subscribers than the notices covered by Section 76.1602,<sup>7</sup> and it is equally obvious that in the 21<sup>st</sup> Century subscribers of a cable system are at least as likely to see notices that are emailed to them or posted on generally available websites that are appropriately noticed to them as they are notices published in a newspaper. As a consequence, it is difficult to imagine any legitimate objection to issuance of the requested clarification.

Approval of this proposal would enable cable operators to send email notices to customers for whom they have a confirmed (i.e., customer-supplied) email address, or to convey

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<sup>5</sup> 47 U.S.C. § 552(c).

<sup>6</sup> See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, Report and Order, 14 FCC Red 5296 ¶¶ 156, 163 (1999); *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, Order and Notice of Proposed Rulemaking, 11 FCC Red 5937 ¶ 39 (1996).

<sup>7</sup> Customers obviously have a greater need to know when the charges for or content of the services they have chosen are changing than they do to be informed of the full range of services and charges that are available to them. Plus, provision of the information described in Section 76.1603 is required by statute, 47 U.S.C. § 552, but provision of the information described in Section 76.1602(b) is not. Nonetheless, the Commission has appropriately allowed flexibility in providing Section 76.1603 notices by confirming that newspaper notice suffices under the rule.

the required notices through other appropriate electronic means reasonably calculated to reach the individual subscriber – e.g., by including in a subscriber’s monthly bill the link to a publicly available website where the notice applicable to a particular customer may be found, or through use of “digital or electronic means for subscribers that communicate with the provider through these means.”<sup>8</sup> In any such communications, customers would be informed that they may request and receive a paper version of their Section 76.1602(b) notices.<sup>9</sup> This flexibility will maximize the efficiency and effectiveness of cable operator communications with their customers.

Clarifying the permissibility of these forms of communication would reflect the realities of modern life. Over the last few decades, email and other forms of electronic communications have become the preferred method of communication between businesses and consumers for a wide and still-growing array of interactions. For instance, cable operators communicate information about service offerings, changes to programming lineups, outage information, and billing information through the cable operators’ websites, through a variety of apps, by email, and through other electronic means. These same mechanisms are used to enable customers to make and confirm service appointments, and even to check on the location and expected arrival time of service technicians. These electronic means of communications have become standard, and widely accepted – even expected – by customers. NCTA and ACA ask the Bureau to recognize this shift by making the requested clarification, which will allow cable operators to

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<sup>8</sup> See *Ensuring Continuity of 911 Communications*, Report and Order, 30 FCC Rcd. 8677, 8709 ¶ 74 (Aug. 7, 2015); 47 C.F.R. § 12.5(d)(2).

<sup>9</sup> In each instance the electronic notice or link would identify a phone number for subscribers to request a paper copy of their Section 76.1602(b) notices.

implement a more effective, more efficient, more convenient, and far more environmentally-friendly method of distributing a narrow set of required notices under the Commission's rules.<sup>10</sup>

Grant of the requested declaratory ruling would be consistent not only with behavioral and business trends, but also the Commission's own recognition of the pervasive shift toward electronic communication. Most notably, in the *Report on FCC Process Reform*, the Commission working group acknowledged the limited utility of hard-copy distributions of Commission documents, both within and outside the agency, and declared that "*it is difficult to justify any remaining distribution of paper copies of items, which should be discontinued in favor of electronic distribution, both internally and externally.*"<sup>11</sup> The *Report on FCC Process Reform* is replete with other recognitions that electronic communications are preferred over paper.<sup>12</sup>

Both before and after the *Report*, the Commission has shown its readiness to adapt to the realities of modern communications. For example:

- In 2012, the Commission adopted rules requiring broadcast television stations to post their public file documents to a central, FCC-hosted, online database rather than maintaining hard-copy paper files at their main studios.<sup>13</sup> Earlier this year, the Commission did the same for public files of cable systems and radio stations, noting that "[t]he evolution of the Internet and the spread of broadband infrastructure have transformed the way society accesses information today."<sup>14</sup>
- A few months ago, the Commission allowed facilities-based fixed, residential voice service providers to convey initial and annual notices and disclosures of backup power

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<sup>10</sup> Electronic notices have the additional virtue of being able to be revised quickly and retransmitted when necessary. The result is a higher level of assurance that the information consumers receive will be accurate.

<sup>11</sup> *Report on FCC Process Reform*, FCC Staff Working Group, 29 FCC Rcd. 1341, 1359 (2014) (emphasis added).

<sup>12</sup> *See id.*, Recommendations 1.1, 1.4, 1.6, 1.9, 1.16, 2.1, 2.2, 2.3, 2.6, 2.7, 2.8, 2.25, 2.35, 4.20, 4.24, 5.1, 5.14, 5.18, 5.21, 5.31, 5.41.

<sup>13</sup> *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd. 4535 ¶ 11 (2012).

<sup>14</sup> *Expansion of Online Public File Obligations To Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Report and Order, FCC 16-4 ¶ 2 (rel. Jan. 29, 2016). *See also id.* ¶¶ 1 (citing FCC's continuing efforts to "harness the efficiencies made possible by digital technology"), 15 ("[t]he Internet is an effective, low-cost means of . . . distributing information"); Statement of Commissioner Jessica Rosenworcel (noting the public expects "all sorts of data and intelligence to be available at [its] fingertips virtually anytime, anywhere").

information “by any means reasonably calculated to reach the individual subscriber” including “email, an online billing statement, or other digital or electronic means for subscribers that communicate with the provider through these means.”<sup>15</sup>

- In September 2015, the Commission issued an order allowing broadcasters to disclose the terms of station-run contests online instead of, or in addition to, over the air, noting that consumer expectations have changed now that “[t]he Internet has become a fundamental part of consumers’ daily lives and now represents the medium used most by the public to obtain information instantaneously.”<sup>16</sup>

This declaratory ruling request is fully consistent with these Commission actions.<sup>17</sup>

The environmental impact of issuing the requested declaratory ruling warrants particular emphasis. Under current practices, Section 76.1602(b) notices are routinely provided in paper form to each new subscriber and then again every year to the same subscribers. Even if all the required information can be crammed on the four sides of two sheets of paper, hard-copy delivery of *annual* notices alone to 50 million cable households necessarily consumes in excess of 100 million pieces of paper, but the number of pieces of paper used is likely quite larger. The environmental cost can be further measured in the envelopes required to transmit the notices and the gasoline burned in delivering them to subscribers’ households and then again in hauling them off to the recycling facility (or landfill). This waste can be avoided, while still making the

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<sup>15</sup> *Ensuring Continuity of 911 Communications*, Report and Order, 30 FCC Rcd. 8677, 8709 ¶ 74 (Aug. 7, 2015); 47 C.F.R. § 12.5(d)(2).

<sup>16</sup> *Amendment of Section 73.1216 of the Commission's Rules Related to Broadcast Licensee-Conducted Contests*, Report and Order, 30 FCC Rcd. 10468 ¶ 8 (2015).

<sup>17</sup> Recognizing and accommodating these same trends, other federal agencies are also updating their rules and procedures to endorse and encourage electronic communications. *See, e.g.*, Press Release, Federal Trade Commission, *FTC's Electronic Filing System Will Accept Confidential Documents*, May 5, 2015, available at <https://www.ftc.gov/news-events/press-releases/2015/05/ftcs-electronic-filing-system-will-accept-confidential-documents> (discussing the FTC's actions permitting electronic filing of confidential documents); Ed O'Keefe, *IRS to Stop Mailing Income Tax Forms*, Wash. Post, Sept. 27, 2010, available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/09/27/AR2010092705058.html> (discussing the decision by the IRS to no longer mail hard-copy tax forms and instructions starting in 2011); Emily Brandon, *Social Security to Go Paperless in 2013*, U.S. News & World Report, Mar. 16, 2012, available at <http://money.usnews.com/money/blogs/planning-to-ire/2012/03/16/social-security-to-go-paperless-in-2013> (noting the Social Security Administration's move to make all payments electronic starting in 2013).

requisite information available to those who want it, by clarifying that cable operators may satisfy their obligation under Section 76.1602(b) by using electronic means that are reasonably calculated to reach individual customers.<sup>18</sup>

### **CONCLUSION**

For the foregoing reasons, the Bureau should adopt a declaratory ruling clarifying that the provision of “written information” required under Section 76.1602(b) of the Commission’s rules may be effectuated via email delivery to subscribers for whom a cable operator has a confirmed email address, through the provision of appropriately-noticed links to websites, or by other electronic measures reasonably calculated to reach individual customers, provided that the information is also available in print upon customer request.

Respectfully submitted,

**/s/ Rick Chessen**

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<sup>18</sup> In the interest of obtaining the requested clarification quickly, NCTA and ACA have limited this request to the notices covered by Section 76.1602(b). However, given the latitude the Commission has already afforded cable operators under Section 76.1603, a confirmation that electronic communications are also appropriate under Section 76.1603, and in particular with respect to changes in programming services and channel positions, would also be welcome.