

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

In the Matter of	)	
	)	
Electronic Delivery of	)	MB Docket No. 17-317
MVPD Communications	)	
	)	
Modernization of Media Regulation	)	MB Docket No. 17-105
Initiative	)	

**COMMENTS**



**AMERICAN CABLE**  
A S S O C I A T I O N

The American Cable Association (“ACA”) hereby submits these comments in response to the Federal Communications Commission’s (“Commission”) Public Notice<sup>1</sup> seeking comment on a proposal to amend the broadcast carriage election notice procedures submitted by NCTA – The Internet and Television Association (“NCTA”) and the National Association of Broadcasters (“NAB”).<sup>2</sup> ACA supports the general

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<sup>1</sup> *Media Bureau Seeks Comment on Industry Proposal For Carriage Election Notice Modernization*, Public Notice, DA No. 18-1250, MB Docket No. 17-317 (rel. Dec. 13, 2018).

<sup>2</sup> See *generally*, Letter from Rick Kaplan, General Counsel and Executive Vice President of Legal and Regulatory Affairs, NAB, and Rick Chessen, Chief Legal Officer and Senior Vice President of Legal and Regulatory Affairs, NCTA, to Michelle Carey, Chief, Media Bureau, Federal Communications Commission, MB Docket Nos. 17-317, 17-105 (filed Dec. 7, 2018) (“NAB-NCTA Letter”).

framework of the NAB-NCTA proposal,<sup>3</sup> but believes the Commission should adopt a separate timeline for small cable operators who would rely on COALS to make their contact information available to broadcasters. Additionally, should the Commission choose to continue *requiring* DBS providers to receive notices by certified mail, it should *allow* cable operators that prefer to continue receiving notices by certified mail to do so as well.<sup>4</sup> Finally, should the Commission adopt the NAB-NCTA proposal, it should similarly permit cable operators to provide required notices to broadcasters electronically, using an e-mail address provided by a broadcast station in its online public inspection file.

The NAB-NCTA Proposal responds to a Notice of Proposed Rulemaking (“NPRM”) that sought comment on whether and how to update the procedures by which broadcast television stations send notice of their carriage elections – either must-carry or retransmission consent – to cable operators on a triennial basis.<sup>5</sup> Under the proposal, broadcast stations would send a carriage election notice to cable operators only if their election changes from the previous cycle, and in such a case, need only send a single notice to each cable operator, rather than individual notices to every system in the Designated Market Area (“DMA”) as currently required. These notices would be sent via e-mail to an address specified by the cable operator and posted either

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<sup>3</sup> See Letter from Rick Chessen, Chief Legal Officer and Senior Vice President of Legal and Regulatory Affairs, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket Nos. 17-317, 17-105 (filed Sept. 17, 2018).

<sup>4</sup> See NAB-NCTA Letter at 2 n.3.

<sup>5</sup> *Electronic Delivery of MVPD Communications; Modernization of Media Regulation Initiative*, Notice of Proposed Rulemaking, 32 FCC Rcd 10755, ¶¶ 25-27 (2017) (“NPRM”). Under the current rules, broadcast television stations are required both to send their triennial notices to individual cable systems within their designated DMA via certified mail and to post those elections in their online public inspection file. 47 C.F.R. §§ 76.64(f); 73.3526(e)(15).

in the operator's online public inspection file or in the Cable Operations and Licensing System ("COALS") database. Cable operators would be required to send an e-mail response confirming receipt of the broadcaster's election notice.

ACA supports this general framework, which incorporates several suggestions ACA made in its reply comments in this proceeding.<sup>6</sup> ACA is particularly pleased that the proposal includes several additional details necessary to protect small providers.

Specifically:

- the proposal requires broadcasters to post their own carriage election contact information in their online public files;
- the proposal makes clear that cable TV systems with fewer than 1,000 subscribers would only need to post their contact information for each "Legal Name" in COALS, and encourages the Commission to modify the database so cable operators who use multiple "Legal Names" can apply their updated contact information to all of them in one step;
- the proposal stipulates that a broadcaster who is changing its prior election but who cannot e-mail its carriage notice to any cable system in its market for any reason, or who does not receive confirmation of receipt from a cable operator, and who does not post such notice in its online public file, will be determined not to have provided notice to the cable system operator and will default to its prior election;<sup>7</sup> and
- the proposal clarifies that an email from a cable operator confirming receipt of an electronically delivered email address is not a concession

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<sup>6</sup> See Reply Comments of the American Cable Association, MB Docket No. 17-317 at 9-10 (filed Mar. 5, 2018) (expressing support for NCTA's proposal to allow broadcasters to send a single carriage election notice covering all of a cable operator's relevant systems to an e-mail address posted by the cable operator in its online public inspection file, subject to a few modifications. First, ACA suggested that, when sending a carriage election notice via e-mail, a broadcaster station should be required to copy on their e-mail notices an e-mail address established by the Commission to serve as third-party confirmation that the notice was sent in a timely manner. Second, ACA suggested that cable operators who are not required to maintain an online public inspection file could instead post a dedicated e-mail address in COALS).

<sup>7</sup> The NAB-NCTA proposal states: "If a broadcaster is unable to contact an existing cable operator or system by email and then by using the phone number provided by the system or operator, then the broadcaster will only be required to copy the FCC's election notice email address described below and include any change of election notice for such provider in its online public file by the election notice deadline." NAB-NCTA Letter at 3.

that the broadcaster station fully satisfied its notice obligation because, as the proposal states, a notice could be defective in other ways.

Despite these positive additions, ACA opposes the proposal's timeline as unrealistic for those small providers that would rely on COALS to make their contact information available online to broadcasters. Generally speaking, the NAB-NCTA proposal imposes new regulatory obligations on these small providers while providing them with no material benefits, as the proposal's primary benefit to cable operators is to reduce the burden of processing election notices sent to multiple individual systems. ACA's small members generally have very few systems, so receiving notices on a system-by-system basis is not a measurable burden.<sup>8</sup> ACA could, of course, oppose the imposition of this new burden on these small operators as it represents a burden shifting from large broadcasters to small broadcasters. Nonetheless, rather than oppose the proposal altogether, ACA here suggests a more constructive alternative for the nation's smallest cable system operators who are disproportionately burdened by any new regulatory requirements.

Specifically, ACA proposes that, for the 2020 election cycle only, broadcast stations who are changing their election take extra steps, if necessary, to ensure that small cable systems that are not required to maintain an online public inspection file receive their election notice. If the broadcaster cannot identify an e-mail address for an operator with a system serving fewer than 1,000 subscribers in its market, or if it does not receive an e-mail from such an operator confirming receipt of its notice, the broadcaster must send the notice to that system operator via certified mail, as required

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<sup>8</sup> More than 600 of ACA's 750 members operator five or fewer systems.

under the current rules. This will ensure that these cable operators have sufficient time to adjust to the new procedures.

ACA believes that the 2020 timeline set forth in the NAB-NCTA proposal is unrealistic for ACA's smallest operators. With less than two years until the 2020 election deadline, ACA does not believe that the Commission will be able to implement the proposal quickly enough to give these operators sufficient time to meet their new obligations. First, the Commission must complete the rulemaking process, which has been significantly delayed due to closure of the Commission between January 3 and January 28,<sup>9</sup> and the Media Bureau's subsequent decision to extend the pleading cycle for more than two months.<sup>10</sup> Once an Order is approved by the full Commission, it must be published in the Federal Register, and any new recordkeeping requirements must be approved by the Office of Management and Budget, pursuant to the Paperwork Reduction Act. This entire process can easily take until the beginning of 2020 or beyond, given that some of the steps involved, like the OMB approval and publications in the Federal Register, are outside the Commission's direct control. After the new rules have been approved, the Commission would then need to make and test the necessary technical updates to the COALS database in accordance with the rules approved by OMB. The NAB-NCTA proposal contemplates that cable operators would have their

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<sup>9</sup> *FCC Plan for the Partial Government Shutdown*, Press Release (rel. Dec. 22, 2018).

<sup>10</sup> Comments were initially due on January 7, 2019, with reply comments due January 17, 2019. On January 29, 2019, a Public Notice announced that the deadline for initial comments was extended until 30 days after publication of the Public Notice in the Federal Register. *Media Bureau Extends Comment and Reply Dates for Industry Proposal on Carriage Election Notice Modernization*, Public Notice, DA No. 19-25, MB No. 17-317 at 1 (rel. Jan 29, 2019) The due date for reply comments was extended until 40 days after publication in the Federal Register. The Public Notice was subsequently published in the Federal Register on February 14, 2019. *Electronic Delivery of MVPD Communications; Modernization of Media Regulation Initiative*, Proposed Rule, 84 Fed. Reg. 4039 (February 14, 2019).

new contact information posted online by August 2, 2020 (60 days prior to the October 1, 2020 election deadline), leaving small cable operators with just a few months at most to update their information in COALS. While large and medium-sized cable operators are likely to be aware of this obligation, and have the resources to update their public files in short order, the same is not necessarily true for the hundreds of small cable operators that have fewer than 1,000 subscribers.<sup>11</sup> ACA's proposal would ensure that these systems are not unduly burdened.

At the same time, ACA's plan would not be overly burdensome for broadcasters, as only those broadcasters who are changing their elections would be required to send their notices via certified mail to operators of cable systems with fewer than 1,000 subscribers who have not updated COALS prior to the 2020 election deadline – a number that ACA expects will be fairly modest. Under the circumstances, this phased-in approach provides the proper balance between providing relief to broadcasters and not imposing new burdens on the smallest cable operators, who, as previously discussed, receive no material benefit from the proposed changes to the election system and would be disproportionately burdened by any new requirements. The new procedures set forth by NAB and NCTA would then apply in their entirety for the 2023 election cycle. This will ensure that the Commission has ample time to make any necessary changes to the COALS database and that small cable operators have ample time to comply with their new obligations.

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<sup>11</sup> ACA expects that it will need to undertake an extensive information campaign to encourage members to provide their contact information in their public file or in the COALS database.

Additionally, ACA believes that the election rules ought to treat MVPDs equally. Thus, if the Commission, for whatever reason, ultimately retains its rules requiring broadcasters to serve DBS providers by certified mail, it should permit cable operators to receive service in this manner as well. The NPRM's discussion of the broadcast carriage election notice rules is not limited to cable notices, and indeed specifically references the separate rules for DBS.<sup>12</sup> There is no reason why cable operators should be subject to changes to the carriage election rules if the Commission elects not to change them for DBS providers.

Finally, as the Commission contemplates making any changes to rules governing broadcast carriage election notices, it should simultaneously consider adopting comparable changes to rules that require cable operators to send notices to broadcasters via certified mail. These rules include:

- Notice that a cable system is commencing operation (47 C.F.R. § 76.64(k)) or activating service (47 C.F.R. § 76.1617);
- Notice of the deletion or repositioning of broadcast signals (47 C.F.R. § 76.1601);
- Notice of a change in the designation of a cable operator's principal headend (47 C.F.R. § 76.1607);
- Notice of a cable operator's intention to change its technical configuration in such a way as to integrate two formerly separate systems (47 C.F.R. § 76.1608); and
- Notice that a cable system provides service to 1,000 or more subscribers, such that it is no longer exempt from the network non-duplication and syndicated exclusivity rules (47 C.F.R. § 76.1609).

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<sup>12</sup> NPRM, ¶ 25.

As ACA explained in a recent *ex parte* letter, the benefits that would accrue to broadcasters in allowing them to send their carriage election notices via e-mail would apply equally to cable operators if the Commission makes similar changes to the notice requirements listed above.<sup>13</sup> Further, it would be most efficient and cost effective for the Commission to modify the rules governing broadcast carriage election notices and those covering cable notices to broadcasters at the same time. The NAB-NCTA proposal will require the Commission to make technical changes to both its Online Public Inspection File and COALS databases. Whatever technical changes are necessary to accommodate cable operators providing electronic notices to broadcasters could be done in less time and at lower cost if done simultaneously with the technical changes required by the NAB-NCTA proposal. Accordingly, if the Commission moves forward on the NAB-NCTA proposal, it should also move forward on making comparable changes to other notices that must be exchanged between cable operators and broadcasters.

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<sup>13</sup> Letter from Mary Lovejoy, Vice President of Regulatory Affairs, American Cable Association, to Marlene Dortch, Secretary, Federal Communications Commission, MB Docket Nos. 17-317, 17-105 (filed Dec. 19, 2018).



For the above reasons, ACA encourages the Commission to adopt the NAB-NCTA proposal, but modified as suggested herein.

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