

**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)	MB Docket No. 17-105
Regulation Initiative)	

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

I. INTRODUCTION AND SUMMARY

The National Association of Broadcasters (NAB)¹ submits these reply comments in response to the Commission’s above-captioned Notice of Proposed Rulemaking.² These replies focus on two issues raised by several commenters: the mechanism by which broadcasters provide notice of their carriage elections to multichannel video programming distributors (MVPDs) and proposals related to the timing of the election process. As NAB argued in its initial comments, the Commission should permit broadcasters to satisfy the notice requirement by placing elections in their online public files,³ and it should reject proposals that would extend or delay the carriage election process and negotiations.

¹ NAB is a nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

² *Electronic Delivery of MVPD Communications, Modernization of Media Regulation Initiative*, Notice of Proposed Rulemaking, MB Docket Nos. 17-317, 17-105, FCC 17-168 (rel. Dec. 14, 2017) (Notice).

³ See Comments of the National Association of Broadcasters, MB Docket No. 17-317, 17-105, at 3-11 (Feb. 15, 2018) (NAB Comments).

II. THE COMMISSION SHOULD ALLOW BROADCASTERS TO SATISFY THE NOTICE REQUIREMENT BY PLACING ELECTIONS IN ONLINE PUBLIC FILES

As NAB and other broadcasters argued in their initial comments, the Commission should modify the cable default election from must-carry to retransmission consent, and it should permit broadcasters to satisfy the notice requirement by placing the elections in their online public files.⁴ NAB continues to believe that both changes are necessary to update the carriage election process and reduce undue burdens on broadcast stations. In the initial comments, no party opposed changing the cable carriage election default to retransmission consent.

Several MVPD commenters, however, proposed modifying the notice regulations to allow various forms of electronic notification – from email notice to an FCC-hosted website.⁵ As some of these commenters correctly recognized, “[t]he broadcast industry obviously incurs significant costs” due to the Commission’s rules,⁶ and electronic notification would reduce these burdens.⁷ NAB appreciates MVPDs’ acknowledgment that the current election rules impose unnecessary burdens on broadcasters. The Commission, however, should not

⁴ See NAB Comments at 3-11; Comments of Meredith Corp., MB Docket Nos. 17-317, 17-105 (Feb. 15, 2018) (Meredith Comments); Joint Comments of CBS Corp., The Walt Disney Co., 21st Century Fox, Inc., Univision Comms. Inc., ABC Television Affiliates Assoc., CBS Television Network Affiliates Assoc., FBC Television Affiliates Assoc., and NBC Television Affiliates, MB Docket Nos. 17-317, 17-105, at 8-9 (Feb. 15, 2018) (Joint Broadcaster Comments).

⁵ See Comments of NCTA – The Internet & Television Association, MB Docket Nos. 17-317, 17-105, at 13-15 (Feb. 15, 2018) (NCTA Comments) (proposing email elections); Comments of Verizon, MB Docket Nos. 17-317, 17-105, at 13-14 (Feb. 15, 2018) (Verizon Comments) (proposing email elections); Comments of DISH Network L.L.C., MB Docket Nos. 17-317, 17-105, at 4-5 (Feb. 15, 2018) (DISH Comments) (proposing an FCC-hosted election website).

⁶ Verizon Comments at 13.

⁷ See NCTA Comments at 13.

adopt these MVPD proposals given that certain elements of the proposals do not adequately address existing deficiencies in the election process.

While the MVPD proposals may eliminate the costs of certified mail, they do not meaningfully reduce two other significant burdens faced by broadcasters. Broadcasters would still incur large time and financial costs to track down the MVPDs in their markets, and they might still inadvertently fail to complete proper notice to every MVPD. Even if MVPDs place an email address on their websites as NCTA and Verizon suggest,⁸ or even if the Commission hosts a website with separate profiles for each MVPD as DISH suggests,⁹ broadcasters would still need to jump through the hoops outlined in NAB's initial comments. To confirm which cable systems are in their communities, broadcasters would still need to pay for Nielsen data, compare the Commission's Cable Operations and Licensing System (COALS) data with other publicly available information,¹⁰ hire outside legal counsel and devote significant internal resources.¹¹ As both NCTA and DISH make clear, the burden

⁸ See NCTA Comments at 13-14; Verizon Comments at 13.

⁹ See DISH Comments at 4.

¹⁰ As NAB explained in its initial comments, COALS does not delineate cable systems by DMA, but rather by county and community. COALS also includes out-of-business cable systems and out-of-date addresses for existing systems. Thus, it is of limited value to broadcasters as a source for determining which cable systems to send election notices. See NAB Comments at 4.

¹¹ See NAB Comments at 3-4; see also Comments of Nexstar Broadcasting, Inc., MB Docket Nos. 17-317, 17-105, at 2-3 (Feb. 15, 2018) (Nexstar Comments) In the last election cycle, Nexstar confirmed information for more than 4100 community systems and 1500 counties and notified more than 1,000 different cable operators. Each Nexstar station elected retransmission consent. Nexstar estimates the total expense of these efforts, including "employee time, database and research information, and mailing expenses," exceeded \$120,000.

would remain with broadcasters to correctly identify all systems for which they are making an election.¹²

Additionally, email notification specifically, without additional broadcaster protections, would still require broadcasters to have faith that their elections were not delayed or lost in transit. As NCTA explained in its proposal, broadcasters would continue to bear the burden of demonstrating “that they had made a valid and timely election.”¹³ This means the risk of a lost email, incorrect email address or any number of possible technical glitches would be borne by the broadcasters absent additional safeguards.¹⁴

In contrast, allowing broadcasters to satisfy the notice requirement by placing elections in their online public files will more effectively reduce the burdens faced by broadcasters, ensure that MVPDs receive timely notice and eliminate uncertainty about whether the broadcast station completed proper notice. This approach would eliminate the need for broadcasters to track down each MVPD in their markets, would provide clear evidence about whether the broadcaster provided notice to MVPDs by the October 1

¹² Although NCTA would allow broadcasters to send one email notification per MVPD operator, their proposal would still require broadcasters to “identif[y] the systems for which it is making elections,” meaning that a broadcaster would still need to confirm every system for which it needs to make an election. See NCTA Comments at 14.

¹³ *Id.*

¹⁴ As the American Cable Association explained, “Any number of issues might result in a broadcaster’s electronic notice not being received by the MVPD in time, which may or may not be the fault of the broadcaster or cable operator. For instance, the broadcaster could send the email to the wrong address, the email could get lost or held up by the broadcaster’s or MVPD’s broadband service provider or by security or email application software used by either party, or there could be an unknown or unexpected power outage on either side of the delivery. . . . With electronic delivery . . . one might never know why an e-mail intended to reach an MVPD never did so.” Comments of the American Cable Association, MB Docket Nos. 17-317, 17-105, at 12-13 (Feb. 15, 2018).

deadline¹⁵ and would eliminate the risk that the election would get lost in transit, providing much-needed clarity for all parties.¹⁶ The Commission should allow broadcasters to satisfy the notice requirement by placing elections in their online public file.

III. THE COMMISSION SHOULD REJECT MVPD PROPOSALS THAT WOULD EXTEND OR DELAY THE CARRIAGE ELECTION PROCESS

AT&T and DISH make various proposals that would extend and delay the carriage election process. AT&T asks the Commission to require broadcasters to submit carriage requests to satellite providers by July 1 and to give satellite providers 60 days to respond to requests.¹⁷ DISH would have the Commission adopt as part of its FCC website proposal the rule that an MVPD need not respond to a broadcaster election until October 31, regardless of when it received the notice.¹⁸ The Commission should reject these proposals.

As the Commission heard in the retransmission consent proceeding, delays in the negotiation process is a big concern.¹⁹ Allowing MVPDs to take 60 days to respond, or to not respond until October 31 regardless of when they receive elections, would delay negotiations and hinder the process. The Commission should reject these proposals.

¹⁵ See Meredith Comments at 1 (explaining that public file documents can be time-stamped, providing clear evidence of whether broadcasters met or missed the October 1 deadline).

¹⁶ See Nexstar Comments at 4 (explaining that with certified mail, “broadcasters are limited to crossing their fingers and hoping that all sent notices actually arrive at their intended destination without incident on or before the October 1 deadline.”).

¹⁷ See Comments of AT&T, MB Docket Nos. 17-317, 17-105, at 7-8 (Feb. 15, 2018).

¹⁸ See DISH Comments at 5.

¹⁹ See, e.g., Comments of Nexstar Broadcasting, Inc., MB Docket No. 15-216, at 32-33 (Dec. 1, 2015) (explaining that several MVPDs in 2015 waited months to respond to Nexstar’s initial proposals); Comments of Hearst Television Inc., MB Docket No. 15-216, at 11 (Dec. 1, 2015) (“Oftentimes Hearst will make a proposal months in advance of a deadline only to have the proposal ignored by the MVPD until the deadline is upon the parties.”).

The Commission should also reject AT&T's proposal that broadcasters be required to submit election requests to satellite providers by July 1 rather than by October 1. This would result in broadcasters having one deadline for satellite and a different deadline for cable. As NAB and others explained in their initial comments, there is real benefit in standardizing cable and satellite elections,²⁰ and the Commission should not set different election deadlines for cable and satellite elections. Doing so would create another layer of risk that a broadcaster would inadvertently fail to complete proper notice and thus lose their preferred carriage rights.

IV. CONCLUSION

For the foregoing reasons, NAB urges the Commission to adopt broadcaster proposals to change the default cable election to retransmission consent and to permit broadcasters to satisfy the notice requirement by placing elections in their online public files. The Commission should also refrain from adopting MVPD proposals that would extend and delay the carriage election and negotiation process.

Respectfully submitted,

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²⁰ See NAB Comments at 11; Joint Broadcaster Comments at 7-8; Nexstar Comments at 8; Meredith Comments at 1.