



Mary C. Lovejoy
Vice President of Regulatory Affairs
American Cable Association
2415 39th Place, NW
Washington, DC 20007

mlovejoy@americancable.org
(202) 603-1735

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VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte* Communication of the American Cable Association; *Electronic Delivery of MVPD Communications*, MB Docket No. 17-317; *Modernization of Media Regulation Initiative*, MB Docket No. 17-105

Dear Ms. Dortch:

On December 17, 2018, Ross Lieberman, Senior Vice President of Government Affairs, American Cable Association (“ACA”), and I met with Erin McGrath, Legal Advisor to Commissioner O’Rielly, to discuss an *ex parte* letter filed by ACA on October 16, 2018.¹ In that letter, and in this meeting, ACA urged the Commission to consider, in conjunction with its evaluation of a proposal to update the procedures by which broadcast stations provide cable operators with notice of their triennial carriage elections, taking comparable steps with respect to notices that cable operators are required to deliver to broadcast stations for other purposes.

The Media Bureau has sought comment on a proposal submitted by the National Association of Broadcasters (“NAB”) and NCTA – The Internet and Television Association (“NCTA”) that would allow broadcast stations to send their triennial carriage election notices via email to the address posted by a cable operator in its online public file or in COALS rather than by certified mail.² In the meeting, ACA suggested that, simultaneous to its consideration of that proposal, the Commission should consider adopting comparable changes to rules that require cable operators to send notices to broadcasters via certified mail.

¹ Letter from Mary C. Lovejoy, Vice President of Regulatory Affairs, American Cable Association, Marlene Dortch, Secretary, Federal Communications Commission, MB Docket Nos. 17-317 & 17-105 (filed Oct. 16, 2018).

² *Media Bureau Seeks Comment on Industry Proposal for Carriage Election Notice Modernization*, Public Notice, DA 18-1250 (rel. Dec. 13, 2018).

In seeking a revision of the rules to allow broadcasters to deliver notices via electronic means, broadcast interests have stated that “allowing stations to provide notice electronically 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 contexts and in line with the Commission’s recent shift toward Internet-based solutions.”³ This statement is equally true for the variety of notices that cable operators must send to broadcast stations via certified mail, and thus the Commission should not amend the rules related to broadcast carriage elections without also allowing cable operators to provide required notices to broadcast stations via email to an address posted by broadcasters in their public files. Those notices 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).

The Commission has been steadily moving toward a regime where regulated entities may communicate with subscribers and other interested parties via electronic communications. In granting a Petition for Declaratory Ruling, filed by ACA and NCTA, clarifying that the “written information” that cable operators must provide to their subscribers pursuant to Section 76.1602(b) may be provided electronically, the Commission identified several key benefits of electronic delivery. These included the “positive environmental aspects of saving substantial amounts of paper annually, increased efficiency, and enabling customers to more readily access accurate information regarding their service options.”⁴ Most importantly for ACA’s members, the Commission also recognized that granting the petition would “greatly ease the burden of complying with Section 76.1602(b)(2) for all cable operators, including in particular small cable operators[,]” and “would afford small and medium independent operators, many of which have very limited resources, ‘greater flexibility to match the electronic operations of their online and other competitors.’”⁵ The Commission has since adopted an Order allowing MVPDs to deliver

³ *Electronic Delivery of MVPD Communications; Modernization of Media Regulation Initiative*, Joint Comments of CBS Corporation, The Walt Disney Company, 21st Century Fox, Inc., Univision Communications Inc., ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association and NBC Television Affiliates, MB Docket No. 17-105 (filed Feb. 14, 2018).

⁴ *National Cable & Telecommunications Association and American Cable Association, Petition for Declaratory Ruling*, Declaratory Ruling, 32 FCC Rcd 5269, ¶ 6 (2017).

⁵ *Id.*, ¶ 8, quoting Petition of National Cable & Telecommunications Association and American Cable Association for Declaratory Relief, MB Docket No. 16-216 at 3 (filed Mar. 7, 2016).

all remaining subscriber notices electronically.⁶ ACA's proposal simply extends the benefits of electronic delivery even further, consistent with the Commission's ongoing efforts to modernize regulatory communications.

ACA explained further that it would be 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 proposal set forth by NAB and NCTA would require the Commission to make technical changes to both its Online Public Inspection File and COALS databases. ACA explained that whatever technical changes are necessary to accommodate cable operators providing electronic notices to broadcasters could be done in less time and at less cost if done simultaneously with the technical changes proposed by NAB and NCTA to accommodate changes to the broadcast carriage election notice rules.

This letter is being filed electronically pursuant to section 1.1206 of the Commission's rules.

Sincerely,



Mary C. Lovejoy

Cc: Erin McGrath

⁶ *Electronic Delivery of MVPD Communications; Modernization of Media Regulation Initiative*, Report and Order and Further Notice of Proposed Rulemaking, FCC 18-166 (rel. Nov. 16, 2018).