



BILLING CODE 6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket Nos. 17-317, 17-105; FCC 19-69]

Electronic Delivery of MVPD Communications; Modernization of Media Regulation

Initiative

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission addresses how to modernize the carriage election process for entities that do not have a public file or Cable Operations and Licensing System (COALS) account. These entities were excluded in the Commission's Report & Order, published elsewhere in this issue of the Federal Register, that modernizes the carriage election notice rules by permitting broadcasters to post their carriage elections online and send notices to covered multichannel video programming distributors (MVPDs) by e-mail only when first electing carriage or changing their carriage election status from must carry to retransmission consent or vice versa.

DATES: Submit comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**; reply comments on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by MB Docket Nos. 17-317 and 17-105, by any of the following methods:

- Federal Communications Commission's Web Site: <http://fjallfoss.fcc.gov/ecfs2/>
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. 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 12th St., SW, Room TW-A325, Washington, DC 20554.
- 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 12th Street, SW, Washington DC 20554.

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 or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

FOR FURTHER INFORMATION CONTACT: Lyle Elder, Lyle.Elder@fcc.gov, 202-418-2120, or Varsha Mangal, Varsha.Mangal@fcc.gov, 202-418-0073.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (*FNPRM*), FCC 19-69, in MB Docket Nos. 17-317, 17-105, adopted on July 10, 2019, and released on July 11, 2019. The complete text of this document is available electronically via the search function on the FCC's Electronic Document Management System (EDOCS) web page at https://apps.fcc.gov/edocs_public/. The complete document is available for inspection and copying in the FCC Reference Information Center, 445 12th Street,

SW, Room CY-A257, Washington, DC 20554 (for hours of operation, see <https://www.fcc.gov/general/fcc-reference-information-center>). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov (mail to: fcc504@fcc.gov) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Synopsis

Further Notice of Proposed Rulemaking

1. In this Further Notice of Proposed Rulemaking, we seek comment on whether and how to apply the new carriage election notification rules adopted in the *Report and Order* published elsewhere in this issue of the Federal Register to certain broadcast stations and covered MVPDs. As discussed in the Order, the rules we adopt require the use of the online public file and/or COALS. These Commission-maintained databases are accessible to the public and used by most, but not all, broadcasters and MVPDs. For example, certain qualified low power TV broadcasters are eligible to demand carriage on local cable systems (though not on DBS providers), but are not required to maintain online public files. Similarly, OVS providers are subject to mandatory carriage obligations but are not required to maintain public inspection files or to use COALS. We seek comment on how to extend the modernization of our rules to reach the entities that do not use these databases (the Excluded Entities), which no commenters have addressed to date in this proceeding. Some entities that are not required to use COALS or maintain an online public file nonetheless do so voluntarily. We expect, and permit, any entity voluntarily using these systems to voluntarily comply with the new election notice process adopted today. Pending the resolution of these open questions, the existing carriage election rules will continue to apply to these Excluded Entities. This means that TV stations that do not

have an online public file will continue to send carriage election notices to covered MVPDs via certified mail in the manner required under our current rules. *See* 47 CFR 76.64(h), 76.55(d). In addition, all broadcasters must continue to send their carriage elections via certified mail to any Excluded Entity MVPD for which they are unable to locate a public file or COALS account.

2. As with other broadcasters and MVPDs, we believe that Excluded Entities would have no difficulty establishing an e-mail address and phone number to use for carriage-related communications. Given that they do not currently maintain accounts in either COALS or the online public file system, however, they would need to establish a means to publicize this contact information. For example, we could require Excluded Entities to establish and maintain a very narrow online public file solely for carriage-related information. Excluded Entities also could simply post any required public-facing information (i.e., any information that would otherwise be provided on COALS or the online public file system) on the “first page” of a company website. We seek comment on these options. Are there other options that would provide the public and other parties similar access to this important information at minimal cost and with minimal burden? Or, should we simply maintain the status quo with respect to this small class of broadcasters and MVPDs?

Procedural Matters

3. *Paperwork Reduction Act Analysis.* This *FNPRM* contains information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. The Office of Management and Budget (OMB), the general public, and other Federal agencies are invited to comment on the information collection requirements contained in this proceeding. In addition, we note that, 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.

Initial Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), 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 *FNPRM*. 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 *FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the *Federal Register*.

5. *Need for, and Objectives of, the Proposed Rules.* The Report and Order, published elsewhere in this issue of the Federal Register, modernizes the triennial election notification process for broadcasters and MVPDs that maintain public files or a COALS account. However, some cable operators and broadcasters (Excluded Entities) are not required to maintain public files or a COALS account and are therefore unable to benefit from the new rules in that rulemaking. The *FNPRM*'s objective is to modernize the carriage election for these Excluded Entities so that they can be relieved of the same burdens caused by sending election notifications via certified mail as discussed in the Report and Order.

6. *Legal Basis.* The proposed action is authorized pursuant to sections 1, 4(i), 4(j), 325, 338, 614, 615, and 653 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 325, 338, 534, 535, and 573.

7. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* 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. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. 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. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

8. *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. Industry data indicate that, of 1,076 cable operators nationwide, all but 11 are small under this size standard. In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers. 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. Thus, under this second size standard, the Commission believes that most cable systems are small.

9. *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.” 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. Industry data indicate that, of 1,076 cable operators nationwide, all but 10 are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

10. *Open Video Services.* Open Video Service (OVS) systems provide subscription services. 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. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is “Wired Telecommunications Carriers.” The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. 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. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS franchises. 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. 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.

11. *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 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," which was developed for small wireline firms. 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." Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. 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.

12. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.” These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. 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. 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. Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

13. The Commission has estimated the number of licensed commercial television stations to be 1,384. 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. 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.

14. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations 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.

15. There are also 417 Class A stations. 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 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.

16. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* The Report and Order significantly reduces the reporting and recordkeeping obligations for broadcasters and MVPDs that maintain a public file. The *FNPRM* seeks to find a method to similarly reduce these burdens for certain broadcasters and cable operators that do not maintain a public file (Excluded Entities). We believe we can lessen the burden on the Excluded Entities by perhaps requiring them to maintain a very narrow public file to post their contact

information or to simply post the information on the “first page” of a company website.

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

18. The majority of the Excluded Entities are small entities. We are considering a variety of possibilities to minimize the economic impact on small entities, as the *FNPRM* is specifically seeking proposals and information to understand what will be easiest and most convenient for these small entities. For example, small broadcasters and cable operators may already have a website and therefore posting an email address and phone number on the front page of an already existing website might impose a negligible burden. Furthermore, the proposed rules will relieve them of the much more onerous burden of searching for the contact information of several MVPDs and mailing their carriage election notice to the MVPDs via certified mail

19. *Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule.*
None.

Ordering Clauses

20. IT IS FURTHER ORDERED that, pursuant to the authority found in sections 1,

4(i), 4(j), 325, 338, 614, 615, and 653 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 325, 338, 534, 535, and 573 this Notice of Proposed Rulemaking IS ADOPTED.

21. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the Report and Order, including the Initial and Final Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.
Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer,

Office of the Secretary.

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