

States Court of Appeals for the appropriate circuit by January 11, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 16, 2020.

**John Busterud,**

*Regional Administrator, Region IX.*

For the reasons stated in the preamble, the EPA amends, part 52, Chapter I, Title 40 of the Code of Federal Regulations as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

■ 1. The authority citation for part 52 continues to read as follows:

*Authority:* 42 U.S.C. 7401 *et seq.*

**Subpart F—California**

■ 2. Section 52.220 is amended by adding paragraphs (c)(168)(i)(A)(11) and (12), (c)(280)(i)(B)(3), (c)(404)(i)(C)(3), (c)(457)(i)(C)(7), (c)(488)(i)(A)(5), (c)(503)(i)(C), (c)(516)(i)(B), (c)(518)(i)(B), (c)(520)(i)(A)(2) and (c)(542) to read as follows:

**§ 52.220 Identification of plan-in part.**

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- (c) \* \* \*
- (168) \* \* \*
- (i) \* \* \*
- (A) \* \* \*

(11) Previously approved on February 3, 1987 in paragraph (c)(168)(i)(A)(1) of this section and now deleted with replacement in paragraph (c)(423)(i)(G)(1), Rule 102 “Definitions”: the definitions for “approved ignition devices,” “open out-door fire,” “permissive burn day” and “range improvement burning.”

(12) Previously approved on February 3, 1987 in paragraph (c)(168)(i)(A)(1) of this section and now deleted with replacement in paragraph (c)(518)(i)(B)(1), Rule 102 “Definitions”:

the definitions for “submerged fill pipe” and “vapor recovery system”.

\* \* \* \* \*

- (280) \* \* \*
- (i) \* \* \*
- (B) \* \* \*

(3) Previously approved on October 10, 2001 in paragraph (c)(280)(i)(B)(2) of this section and now deleted with replacement in paragraph (c)(503)(i)(C)(1), Rule 101, adopted on February 15, 2000.

\* \* \* \* \*

- (404) \* \* \*
- (i) \* \* \*
- (C) \* \* \*

(3) Previously approved on December 7, 2012 in paragraph (c)(404)(i)(C)(1) of this section and now deleted with replacement in paragraph (c)(542)(i)(B)(1), Rule 2, “Definitions,” revised on October 22, 1968, as revised through April 12, 2011.

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- (457) \* \* \*
- (i) \* \* \*
- (C) \* \* \*

(7) Previously approved on June 11, 2015 in paragraph (c)(457)(i)(C)(1) of this section and now deleted with replacement in paragraph (c)(518)(i)(B)(1), Rule 101, “Definitions,” amended on April 24, 2014.

\* \* \* \* \*

- (488) \* \* \*
- (i) \* \* \*
- (A) \* \* \*

(5) Previously approved on June 21, 2017 in paragraph (c)(488)(i)(A)(1) of this section and now deleted with replacement in (c)(516)(i)(B)(1), Regulation 1, Rule 2, “Definitions,” Rev. Adopted and Effective on June 30, 1999, Table 1—Exempt Compounds: Rev. and Effective on June 14, 2016.

\* \* \* \* \*

- (503) \* \* \*
- (i) \* \* \*

(C) El Dorado County Air Quality Management District.

(1) Rule 101, “General Provisions and Definitions,” amended on June 20, 2017.

(2) [Reserved]

\* \* \* \* \*

- (516) \* \* \*
- (i) \* \* \*

(B) San Diego County Air Pollution Control District.

(1) Rule 2, “Definitions,” amended on July 11, 2017.

(2) [Reserved]

\* \* \* \* \*

- (518) \* \* \*
- (i) \* \* \*

(B) Butte County Air Quality Management District.

(1) Rule 101, “Definitions,” amended on December 14, 2017.

(2) [Reserved]

\* \* \* \* \*

- (520) \* \* \*
- (i) \* \* \*
- (A) \* \* \*

(2) Previously approved on July 2, 2019 in paragraph (c)(520)(i)(A)(1) of this section and now deleted with replacement in paragraph (c)(542)(i)(A)(1), Rule 102, “Definition of Terms,” amended on April 23, 2018.

\* \* \* \* \*

(542) New regulations for the following APCDs were submitted on August 19, 2019 by the Governor’s designee as an attachment to a letter dated August 16, 2019.

(i) *Incorporation by reference.* (A) Mojave Desert Air Quality Management District.

(1) Rule 102, “Definition of Terms,” amended on January 28, 2019.

(2) [Reserved]

(B) Ventura County Air Pollution Control District.

(1) Rule 2, “Definitions,” as amended through April 9, 2019.

(2) [Reserved]

(ii) [Reserved]

[FR Doc. 2020–23551 Filed 11–10–20; 8:45 am]

BILLING CODE 6560–50–P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 76**

[MB Docket Nos. 19–347, 17–105, 10–71; FCC 20–135; FRS 17141]

**Cable Service Change Notifications; Modernization of Media Regulation Initiative; Retransmission Consent**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission revises the regulations governing the notices that cable operators must provide subscribers and local franchise authorities (LFAs) regarding rate and service changes. Specifically, document amends the rules to clarify that when service changes occur due to retransmission consent or program carriage negotiations that fail within the last 30 days of a contract, cable operators must provide notice to subscribers “as soon as possible,” rather than 30 days in advance. The document also eliminates the requirement that cable operators not subject to rate regulation provide 30 days’ advance notice to LFAs of rate or

service changes. Finally, it eliminates the requirement that cable operators provide notice of any significant change to the information required in the certain annual notices, as well as adopts several non-substantive revisions that clarify the rules and eliminate redundant provisions. The Commission concludes that these changes will make consumer notices more meaningful and accurate, reduce consumer confusion, better ensure that subscribers receive the information they need to make informed choices about their service options, and reduce unnecessary regulatory burdens.

**DATES:** Effective November 12, 2020.

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, contact John Cobb, [John.Cobb@fcc.gov](mailto:John.Cobb@fcc.gov), of the Policy Division, Media Bureau, (202) 418-2120.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order*, MB Docket Nos. 19-347, 17-105, 10-71; FCC 20-135, adopted on September 30, 2020 and released on October 1, 2020. The full text of this document is available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word, and/or Adobe Acrobat). To request these documents in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

### Synopsis

In this *Report and Order*, we revise our regulations governing the notices that cable operators must provide subscribers and local franchise authorities (LFAs) regarding rate and service changes. Specifically, we amend § 76.1603 of our rules to clarify that when service changes occur due to retransmission consent or program carriage negotiations that fail within the last 30 days of a contract, cable operators must provide notice to subscribers "as soon as possible," rather than 30 days in advance. We also amend § 76.1603(c) to eliminate the requirement that cable operators not subject to rate regulation provide 30 days' advance notice to LFAs of rate or service changes. Finally, we amend § 76.1603(b) to eliminate the requirement that cable operators provide notice of any significant change to the information required in the § 76.1602 annual notices, as well as adopt several non-substantive revisions

to §§ 76.1601 and 76.1603 that clarify the rules and eliminate redundant provisions. We adopt these changes to make consumer notices more meaningful and accurate, reduce consumer confusion, better ensure that subscribers receive the information they need to make informed choices about their service options, and reduce unnecessary regulatory burdens. With this proceeding, we continue our efforts to modernize our regulations to better reflect today's media marketplace.

**Background.** As explained fully in the *NPRM*, several provisions of the Communications Act of 1934, as amended (the Act)—sections 623(b), 624(h), and 632—address the notices that cable operators must provide to their subscribers and LFAs regarding service or rate changes. The Commission adopted regulations implementing these notice requirements through several decisions in 1993 and consolidated those regulations into a newly created subpart T in 1999. Two sections within that subpart are at issue in this *Report and Order*. First, § 76.1601 obligates cable operators to provide 30 days' advance notice to broadcast television stations and to subscribers of the deletion or repositioning of any such station. Second, § 76.1603 places several additional notice obligations on cable operators. Subsection (b) requires that cable operators notify subscribers of "any changes in rates, programming services or channel positions" and any significant changes in the information required by § 76.1602 as soon as possible in writing and 30 days in advance if the change is within the control of the cable operator. Subsection (c) requires that cable operators notify LFAs 30 days "before implementing any rate or service change." Finally, subsection (d) requires cable operators to "provide written notice to a subscriber of any increase in the price to be charged for the basic service tier or associated equipment at least 30 days before any proposed increase is effective." These rules, which notably apply only to cable operators and not to other multichannel video programming distributors (MVPDs), have overlapping obligations as a result of the consolidation in 1999.

In 2011, the Commission sought comment on whether to revise § 76.1601 "to require that notice of potential deletion of a broadcaster's signal be given to consumers once a retransmission consent agreement is within 30 days of expiration, unless a renewal or extension has been executed, and regardless of whether the station's signal is ultimately deleted." The

Commission noted that while adequate advance notice of retransmission consent disputes can allow consumers to prepare for service disruptions, "such notice can be unnecessarily costly and disruptive when it creates a false alarm, *i.e.*, concern about disruption that does not come to pass, and induces subscribers to switch MVPD providers in anticipation [thereof]."

In December 2019, we adopted the *NPRM* in this proceeding as a part of our ongoing Media Modernization Initiative. In the *NPRM*, we proposed three primary changes to the notice obligations in §§ 76.1601 and 76.1603: (1) Clarifying in § 76.1603(b) that cable operators have no obligation to provide notice to subscribers 30 days in advance of channel lineup changes when the change is due to retransmission consent or program carriage negotiations that fail during the last 30 days of a contract but that rather, in such a situation, they must provide notice "as soon as possible;" (2) modifying § 76.1603(c) to require service and rate change notices to LFAs only if required by an LFA; and (3) adopting several technical edits to §§ 76.1601 and 76.1603 to make the rules more readable and remove duplicative requirements. We received seven comments and three replies in response to the *NPRM*. Cable operators, ACA Connects (ACA) and NCTA—The internet and Television Association (NCTA) generally supported all of our proposals, while The National Association of Telecommunications Officers and Advisors (NATOA) and various LFAs raised concerns in opposition to the proposals to clarify the service change notice obligations in instances involving failed program carriage or retransmission consent negotiations and to require notice to LFAs only if they specifically request it.

**Discussion.** In this *Report and Order*, we adopt several revisions to the rules in §§ 76.1601 and 76.1603 governing the notices that cable operators must provide to subscribers and LFAs regarding rate and service changes. First, we adopt our proposal to clarify that cable operators must provide notice as soon as possible in the event of service changes that occur due to retransmission consent or program carriage negotiations that fail in the final 30 days of a contract, rather than 30 days in advance; we also provide guidance on which means are reasonable to provide that notice. Second, we amend the LFA notice requirements to eliminate the requirement that all cable operators provide 30 days' advance notice to LFAs of any changes in rates or services rather than adopting our initial proposal

concerning LFA notice. Instead, we conclude that only cable operators subject to rate regulation will be required to provide 30 days' advance written notice to LFAs of any proposed increase in the price to be charged for the basic service tier. Finally, we eliminate the requirement that cable operators provide notice of any significant change to the information required in the § 76.1602 annual notices, as well as adopt several technical edits to make the rules more readable and remove duplicative requirements.

*Service Change Notice Due to Failed Retransmission Consent and Program Carriage Negotiations.* We adopt our proposal to amend § 76.1603(b) to clarify that cable operators must provide subscribers notice "as soon as possible" when service changes occur due to retransmission consent or program carriage negotiations that fail within the last 30 days of a contract, rather than 30 days in advance. In doing so, we reverse our previous view that such negotiations are within the control of cable operators. Instead, we adopt a new rule that failed program carriage or retransmission consent negotiations will be deemed outside of cable operators' control. In all other circumstances, however, the subscriber notice requirements will continue to operate as they have previously. That is, rate and service changes must be provided 30 days in advance of any change, unless the change is outside the cable operators' control, in which case it must be provided as soon as possible. We conclude that this action will make subscriber notices more meaningful and accurate, reduce consumer confusion, and ensure that subscribers receive the information they need to make informed choices about their service options.

We reverse the Commission's previous interpretation that program carriage and retransmission consent negotiations are within the control of a cable operator for the purpose of § 76.1603(b). No commenter argued that the Commission should retain its current interpretation that negotiations are within the control of cable operators in this context. We agree with the multiple commenters that contend that retransmission consent and program carriage negotiations are not within the control of the cable operator because cable operators cannot unilaterally control the outcome of such negotiations. Or, as the saying goes, it takes two to tango. Thus, we find that service changes that occur as a result of failed program carriage or retransmission consent negotiations are not within the control of a cable

operator and amend § 76.1603(b) to provide so explicitly. We emphasize that this change applies only in the specific context of program carriage or retransmission consent renewal negotiations that fail within the final 30 days of an existing contract and result in a service change.

We find that this change is consistent with the Act. As noted in the *NPRM*, section 632(b) of the Act directs the Commission to adopt "standards by which cable operators may fulfill their customer service requirements," and section 632(c) affords cable operators the flexibility to "provide notice of service and rate changes to subscribers using any reasonable written means at its sole discretion." These statutory provisions do not explicitly state that all notices must be provided in advance. In fact, section 632(c) refers only to "notice," whereas various other provisions of the Act specifically require "advance notice."

We are persuaded that requiring cable operators to provide notice to subscribers that a channel may be dropped whenever a program carriage or retransmission consent renewal negotiation extends into the final 30 days of an existing contract would cause substantial consumer confusion and thus would not further the goal of facilitating informed choices. We are not persuaded by LFAs' contention that subscribers need advance notice of potential deletions so that they can seek alternative sources of the programming that could ultimately be deleted. Although the legislative history of the Telecommunications Act of 1996 indicates that Congress wanted "to ensure that consumers have sufficient warning about rate and service changes so they can choose to disconnect their service prior to the implementation of the change," we conclude that notices about deletions that may never occur are confusing to consumers and, therefore, do not fulfill this goal. The record provides ample evidence that program carriage and retransmission consent negotiations often come down to the final days—if not hours—of an existing contract and rarely result in a signal deletion. For example, Altice notes that in 2019 at least 90 percent of Altice USA's programming negotiations were resolved during the final 30 days of an existing contract and that agreements were reached with all its programming partners without any channels going dark. Similarly, ACA contends that "[c]arriage agreements are almost always renewed within days (or even hours) of their expiration, and sometimes following multiple short-term extensions." Likewise, NCTA

asserts that "[t]he vast majority of these negotiations end successfully."

The record does not support requiring cable operators to bombard subscribers with notices whenever retransmission consent or program carriage negotiations continue into the last 30 days of a contract. As cable commenters observe, the most contentious negotiations—*i.e.*, those most likely to result in a programming blackout—are often the subject of news reports, advertisements, and social media posts, which provide consumers with information about potential programming disputes and encourage them to "make their voices heard" with their cable operator. Further, we do not agree with LFAs that notices could be sufficiently tailored to avoid causing consumer confusion given the large number of renewal negotiations that extend into the final 30 days of an existing contract and the concomitant volume of potential deletion notices in situations where the channel is not ultimately deleted. Rather, we agree with commenters that caution that providing inherently uncertain notices about potential channel deletions that ultimately do not come to pass could cause some consumers to incur "the burden and expense of switching video providers under the belief that they will soon lose their favorite programming, only later to find (in the vast majority of cases) that a deal was reached that avoided this outcome." We also find that sending repeated notices about changes that do not ultimately occur would make it more likely that many subscribers would ignore those notices, resulting in their missing information about changes that actually do occur.

We interpret "as soon as possible" to require cable operators to provide notice without delay after negotiations have failed such that the cable operator is reasonably certain it will no longer be carrying the programming at issue, and, if possible, before the programming goes dark. The Commission has not previously defined what it means to provide notice "as soon as possible" in § 76.1603(b) when changes occur due to circumstances outside of a cable operator's control. No commenter offered any arguments in support of adopting a specific timeframe to satisfy the "as soon as possible" standard. We conclude that determining whether a notice was delivered as soon as possible is a necessarily fact-specific determination, and thus we decline to adopt any firm timeframe during which a notice would presumptively satisfy the standard. We disagree with Verizon's suggestion that a channel's going dark should be necessary to

trigger the delivery of a notice about the service change as soon as possible, because delivery could be triggered earlier if negotiations have reached the point where a cable operator is reasonably certain it will no longer be carrying the programming at issue. We do, however, agree that if the channel has gone dark, negotiations have clearly failed so as to trigger the notice requirement.

*Form of Notice.* We revise our rules to clarify that cable operators have some flexibility as to the means by which they provide written notice to communicate service changes to subscribers when those changes result from failed program carriage or retransmission consent negotiations or other changes that are outside the cable operator's control. Section 632(c) of the Act states that a cable operator may use "any reasonable written means at its sole discretion" to deliver notice of service and rate changes to subscribers, and in 2018, the Commission adopted new rules that interpret this section of the Act to permit the electronic delivery of consumer notices by cable operators. In the *Order* adopting those rules, the Commission indicated that it would address the issue of rate and service change notices in a separate proceeding, given that these notices "provide targeted and immediate information about a single event rather than a comprehensive catalog of information." We conclude that in these cases where service change are due to circumstances outside a cable operator's control, our interpretation of "reasonable notice" must reflect that cable operators need flexibility in giving notice to consumers. Therefore, in these specific cases, we will not require cable operators to follow the electronic notification procedures set forth in § 76.1600 of our rules, but instead we amend §§ 76.1600 and 76.1603 of rules to permit them to provide notice through other direct and reliable written means that can reach subscribers more quickly.

In this regard, we conclude that a channel slate on the vacant channel that appears after the programming has been dropped is a reasonable means to communicate the service change to viewers in the immediate aftermath of a channel going dark. We agree with those commenters who assert that channel slates are the most direct form of notice to immediately inform interested subscribers about a channel deletion. We reject the Joint LFAs' contention that channel slates are an inadequate form of notice on their own because they only become available after the programming has been dropped. Rather, because these negotiations, by their very

nature, often continue until the final minutes of existing contracts, we find that a channel slate could be the most immediate direct form of notice to reach affected subscribers in the event of a last-minute channel deletion. Thus, we conclude that channel slates would satisfy the "any reasonable written means" standard in the specific context of a service change due to retransmission consent or program carriage renewal negotiations that fail near the end of an existing contract, as they would communicate time-sensitive notice about service changes to subscribers via the quickest means possible. Accordingly, we revise § 76.1603 to provide that cable operators shall provide notice of service changes outside of their control "as soon as possible using any reasonable written means at the operator's sole discretion, including channel slates." We note that there may be situations in which a channel slate may not satisfy the "as soon as possible" standard despite the service change resulting from program carriage or retransmission consent negotiations that fail within the final 30 days of an existing contract. For example, if carriage negotiations between a cable operator and a programmer fail well in advance of the expiration of the contract, and the cable operator does not intend to continue negotiating, we would expect such operator to deliver notice through other means—such as email—before the channel goes dark. Similarly, to the extent possible, we expect and encourage cable operators to inform subscribers through multiple types of "written means" to ensure that subscribers are adequately informed about any changes to their cable service.

In addition, we agree with Verizon that newspaper notice is not a reasonable written means of notice in this context. Notably, no commenter suggested that newspaper notice in this context should be deemed reasonable. As Verizon asserts, newspaper notices "may not reach all customers and may be delayed, inaccurate by the time they are published, or unread altogether, [and do] not provide timely notice to allow customers to make informed decisions about potential service changes." Given this, we conclude that such notice is insufficient to satisfy the reasonable written means standard in the context of failed program carriage or retransmission consent negotiations.

*Notices of Service or Other Changes to Local Franchise Authorities.* We conclude that in areas that are no longer subject to rate regulation the substantial costs to cable operators of complying with the LFA rate and service change

notice requirements outweigh any potential benefits that could accrue to consumers as a result of these notices. Accordingly, rather than adopting our initial proposal, we eliminate the LFA notice requirement for cable systems subject to effective competition under the Commission's rules and adopt a requirement that rate regulated systems provide LFAs with 30 days' advance notice of any proposed increase in the price to be charged for the basic service tier.

We are not persuaded that we should preserve the current requirements that cable operators notify LFAs before implementing any rate or service change with respect to those cable operators that face effective competition. First, in the absence of rate regulation, LFAs have little practical use for this information because changes in rates or services are no longer subject to an LFA's authority. And the cable operator is in fact better positioned to address subscriber inquiries concerning rate or service changes than LFAs because LFAs receive only the same information that subscribers already receive under the notice requirements in § 76.1603(b). Second, those LFAs that do rely on these notices to address subscriber inquiries or complaints can implement their own notice requirements, consistent with the Act. Given that there is evidence that cable operators incur significant costs to comply with the current requirements and little evidence that there is widespread use of these LFA notices to benefit subscribers, we eliminate the LFA notice requirement for most cable operators.

We are persuaded to eliminate the LFA rate and service change notice requirements on cable operators subject to effective competition by the multiple commenters who contend that the costs to cable operators of complying with these LFA notice requirements outweigh any benefit to consumers from retaining the requirements. Contradicting NATOA's assertion that notifying LFAs is a de minimis additional expense, cable operators present evidence in the record that they expend significant resources to comply with the LFA notice requirements. Specifically, NCTA highlights several examples from its members' experiences, including one cable operator who budgets \$85,000 annually to deliver LFA notices, in addition to the internal resources devoted to ensure compliance. Further, NCTA points out that in some instances changes that affect only a handful of subscribers nationwide require that notice be delivered to all of the hundreds, if not thousands, of LFAs within a cable operator's service area.

Altice suggests that it has added difficulties complying with the LFA notice requirements, particularly in more rural and sparsely populated jurisdictions where it has had difficulty ascertaining the relevant contact information. We conclude that any benefit that may accrue to consumers from the LFA notice requirements does not outweigh the costs identified in the record. We disagree with those commenters that maintain that we should preserve the LFA notice requirement in its current form to enable LFAs to address inquiries and complaints from subscribers. Although NATOA argues that their LFA members rely on these notices to address inquiries and complaints, Altice asserts that LFAs rarely follow up with inquiries regarding these notices and that subscribers can obtain such information directly from the cable operator. Moreover, cable operators contend that the LFA notice requirements are the relic of an era of widespread rate regulation of cable systems and are no longer necessary now that there is effective competition nearly nationwide such that LFAs do not need the rate information to field consumer calls.

Although we disagree that the current requirement is necessary in areas that are subject to effective competition, we are persuaded that notice of certain rate changes is critical to LFAs certified to regulate cable operator rates because they must be made aware of those rate changes before they take effect to fully exercise their rate regulation authority. Thus, we retain the requirement to provide notice of certain rate changes only with respect to those cable operators in areas where they are not subject to effective competition. Specifically, we adopt a rule, consistent with the language of section 623(b)(6), that such operators must provide LFAs with 30 days' advance notice of any increase proposed in the price to be charged for the basic service tier. This requirement will ensure that relevant LFAs receive notice of any proposed increase in the rates they have the authority to regulate. We specifically do not require cable operators in areas where they are subject to rate regulation to provide advance notice of service changes or of rate changes other than the type described above. This type of notice is not contemplated by section 623(b)(6), and we find that the information gathered from such notices is of little if any use to LFAs, even in areas subject to rate regulation.

### Other Rule Changes

*Notice of Significant Changes to Information in Annual Notices.* We eliminate from § 76.1603(b) the requirement that cable operators provide notice of any significant change to the information required in the § 76.1602 annual notices, as proposed by NCTA. No commenter contends that we should retain this requirement. NCTA asserts that “[t]his rule is yet another artifact of a time when cable operators faced little competition and consumers did not have ready access to such information over the internet.” We find that much of the information encompassed by the annual notice, such as that concerning installation policies and instructions for use, may not be as relevant to current subscribers as changes in rates and services. Changes to rates and services are still required under the rules we adopt today to be provided either “as soon as possible” or within 30 days of the change. With respect to the other categories of information, we agree with NCTA that interested subscribers would likely first turn to the internet for such information. We therefore conclude that we should eliminate this requirement.

*Readability and Redundancy.* We adopt as proposed in the *NPRM* three technical changes to §§ 76.1601 and 76.1603 to clean up the rules. Commenters who addressed these proposals—representing both cable providers and LFAs—expressed unanimous support for amending these provisions to eliminate redundancies, which resulted from previous streamlining efforts that consolidated multiple, disparate notice provisions into one new subpart. First, we amend § 76.1601 to delete the requirement that cable operators provide notice of the deletion or repositioning of a broadcast channel “to subscribers of the cable system,” as it is redundant of the subscriber notice requirements in § 76.1603. This action will consolidate all of the subscriber notice requirements into one provision, § 76.1603(b). Second, we delete § 76.1603(d), which requires that cable operators notify subscribers about changes in rates for equipment that is provided without charge under § 76.630, because it is duplicative of language in § 76.630(a)(1)(vi). Finally, we delete § 76.1603(e), which provides that a cable operator “may provide such notice using any reasonable written means at its sole discretion.” This provision is duplicative of language in section 632(c) of the Act and language in § 76.1603(b).

*Other Proposals.* We also adopt our proposal to eliminate the language

regarding the carriage of multiplexed broadcast signals in § 76.1603(c), which was supported by NCTA and unopposed by all other commenters. This requirement was added at the advent of digital broadcast television and does not reflect the standard practices of cable operators with regard to multiplexed broadcast signals.

We decline to adopt Joint LFAs' proposal that we eliminate the requirement in §§ 76.1602(a) and 76.1603(a) that an LFA provide cable operators with 90 days' written notice of its intent to enforce the customer service standards found in §§ 76.1602 and 76.1603. We agree with NCTA that these LFA notices of intent to enforce requirements “are a necessary and appropriate mechanism for alerting cable operators of an LFA's enforcement plans.” Further, given that Joint LFAs' appear to have misunderstood these rules, their arguments for their removal are not persuasive.

*Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Order. The FRFA is set forth below.

*Paperwork Reduction Act Analysis.* This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

*Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that, this rule is “non-major” under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this *Report & Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

*Final Regulatory Flexibility Act Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking* in this proceeding. The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. We received no comments specifically directed toward the IRFA. This present Final Regulatory

Flexibility Analysis (FRFA) conforms to the RFA.

*Need for, and Objective of, the Report and Order.* In today's video marketplace, retransmission consent and program carriage negotiations are often concluded within days—if not hours—of the expiration of existing agreements. And in those cases, it is frequently unclear, 30 days prior to a contract's expiration, whether a new agreement will be reached, there will be a short-term extension, or programming will be dropped. This uncertainty led to difficult questions regarding what notice cable operators should be required to provide to subscribers and when they should be required to provide it. On the one hand, subscribers must receive meaningful information regarding their programming options so they can make informed decisions about their service. On the other hand, inaccurate or premature notices about theoretical programming disruptions that never come to pass can cause consumer confusion and lead subscribers to change providers unnecessarily.

This *Report and Order* modifies our rules concerning notices that cable operators must provide to subscribers and local franchise authorities (LFAs) regarding service or rate changes. First, we clarify that cable operators must provide notice as soon as possible in the event of service changes that occur due to retransmission consent or program carriage that fail in the final 30 days of a contract, rather than 30 days in advance. We are persuaded that requiring cable operators to provide notice to subscribers that a channel may be dropped anytime a program carriage or retransmission consent renewal negotiation extends into the final 30 days of an existing contract would cause substantial consumer confusion and thus would not further the goal of facilitating informed choices. In all other circumstances, however, the subscriber notice requirements will continue to operate as they have previously. That is, rate and service changes must otherwise be provided 30 days in advance of any change, unless the change is outside the cable operators' control, in which case it must be provided as soon as possible.

Second, we amend our rule to eliminate the requirement that cable operators not subject to rate regulation provide 30 days' advance notice to LFAs for rate or service changes, and instead retain a narrower requirement that rate-regulated cable systems continue to provide 30 days' advance notice to the relevant LFA of any increase proposed in the price to be charged for the basic service tier. Finally, we eliminate the

requirement that cable operators provide notice of any significant change to the information required in the annual notices that must be sent to subscribers, as well as adopt several technical edits to make the rules more readable and remove duplicative requirements.

*Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* There were no comments filed in response to the IRFA.

*Response to comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.

The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

*Description and Estimate of the Number of Small Entities to Which 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.

*Small Governmental Jurisdictions.* A "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." U.S. Census Bureau data from the 2017 Census of Governments indicates that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,431 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 Special purpose governments

(independent school districts and special districts) with populations of less than 50,000. The 2017 U.S. Census Bureau data for most types of governments in the local government category shows that the majority of these governments have populations of less than 50,000. Based on this data we estimate that at least 48,471 local government jurisdictions fall in the category of "small governmental jurisdictions."

*Cable Companies and Systems (Rate Regulation Standard).* The Commission has 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 4,200 cable operators nationwide, all but 9 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 4,200 systems nationwide, 3,900 have fewer than 15,000 subscribers, based on the same records. Thus, under this second size standard, the Commission believes that most cable systems are small.

*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." There are approximately 45,073,297 cable subscribers in the United States today. Accordingly, an operator serving fewer than 450,733 subscribers shall be deemed a small operator if its annual revenues, when combined with the total revenues of all its affiliates, do not exceed \$250 million in the aggregate. Based on the available data, we find that all but five independent cable operators serve fewer than 450,733 subscribers. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, 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 the definition in the Communications Act.

*Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* This *Report and Order* modifies three

requirements for cable operators pertaining to the notices they must deliver to subscribers and LFAs in advance of service changes. First, the rule that requires cable operators to notify subscribers about changes to rates, programming services, or channel positions with 30 days' advance notice will be clarified to instead require that cable operators notify subscribers "as soon as possible" in the case of retransmission consent or program carriage negotiations that fail during the last 30 days of a contract. This will reverse the Commission's past position that negotiations are "within the control of the cable operator," eliminating the need to notify customers of an impending change in programming 30 days in advance when carriage negotiations have not yet concluded. Second, the requirement that cable operators to notify LFAs of any changes to rates, programming services, or channel positions will be eliminated entirely for cable operators that are subject to effective competition. Finally, it deletes the requirement that cable operators provide notice of any significant change to the information required in the annual notices that must be sent to subscribers.

*Steps Taken to Minimize the 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 developing its 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 such small entities."

The *Report and Order*, as stated in Section A of this FRFA, modifies two rules to reduce the burden on all cable operators, including small operators, as they will not be required to provide as many notices. Likewise, this may reduce the burdens on small local governments, which would not have to review as many filings. As a part of the Commission's Media Modernization Initiative, the intent of changing these requirements is to reduce the costs of compliance with the Commission's rules, including any related managerial, administrative, legal, and operational costs. We anticipate that small entities,

as well as larger entities, will benefit from this modification.

*Report to Congress.* The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 4(i), 4(j), 623, 624, and 632 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 543, 544, and 552, the Report and Order *is adopted*. *It is further ordered* that the Commission's rules *are hereby amended* as set forth in Appendix A, effective as of the date of publication of a summary in the **Federal Register**. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration. *It is further ordered* that the Commission will send a copy of the *Report and Order* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA). *It is further ordered* that should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 19–347 *shall be terminated* and its docket closed.

#### List of Subjects in 47 CFR Part 76

Administrative practice and procedure, Cable Television, Communications, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

**Marlene Dortch**,

*Secretary.*

For the reasons set forth in the preamble, the Federal Communications Commission amends part 76 of title 47 of the Code of Federal Regulations as follows:

#### PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The Authority citation for Part 76 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544,

544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 2. Amend § 76.5 by adding paragraph (rr) to read as follows:

#### § 76.5 Definitions.

\* \* \* \* \*

(rr) Channel Slates. A written notice that appears on screen in place of a dropped video feed.

■ 3. Amend § 76.1600 by revising paragraph (a) to read as follows:

#### § 76.1600 Electronic delivery of notices.

(a) Except as provided in § 76.1603 for changes that occur due to circumstances outside a cable operator's control, which also may be provided as set forth in 76.1603(b), written information provided by cable operators to subscribers or customers pursuant to §§ 76.1601, 76.1602, 76.1603, 76.1604, 76.1618, and 76.1620 of this Subpart T, as well as subscriber privacy notifications required by cable operators, satellite providers, and open video systems pursuant to sections 631, 338(i), and 653 of the Communications Act, may be delivered electronically by email to any subscriber who has not opted out of electronic delivery under paragraph (a)(3) of this section if the entity:

\* \* \* \* \*

■ 4. Revise § 76.1601 to read as follows:

#### § 76.1601 Deletion or repositioning of broadcast signals.

A cable operator shall provide written notice to any broadcast television station at least 30 days prior to either deleting from carriage or repositioning that station.

■ 5. Amend § 76.1603 by:

■ a. Revising paragraphs (b) and (c);

■ b. Removing paragraphs (d) and (e); and

■ c. Redesignating paragraph (f) as paragraph (d).

The revisions read as follows:

#### § 76.1603 Customer service—rate and service changes.

\* \* \* \* \*

(b) Cable operators shall provide written notice to subscribers of any changes in rates or services. Notice shall be provided to subscribers at least 30 days in advance of the change, unless the change results from circumstances outside of the cable operator's control (including failed retransmission consent or program carriage negotiations during the last 30 days of a contract), in which case notice shall be provided as soon as possible using any reasonable written means at the operator's sole discretion, including Channel Slates. Notice of rate changes shall include the precise

amount of the rate change and explain the reason for the change in readily understandable terms. Notice of changes involving the addition or deletion of

channels shall individually identify each channel affected.

(c) A cable operator not subject to effective competition shall provide 30 days' advance notice to its local franchising authority of any increase

proposed in the price to be charged for the basic service tier.

\* \* \* \* \*

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