

UPDATE November 27, 2018

FCC Rules That Cable Operators May Deliver Subscriber Notices Via Email

On November 16, 2018, the FCC released a [Report and Order and Further Notice of Proposed Rulemaking](#) modernizing its rules so that multichannel video programming distributors (“MVPDs”) may deliver notices to subscribers electronically via verified email.

This action expands upon last year’s [Declaratory Ruling](#) – which clarified that cable operators may provide annual notices via e-mail to a verified email address so long as an operator also includes a mechanism for customers to opt out of e-mail delivery and continue to receive paper notices – by allowing MVPDs to send additional general subscriber notices via email.

Background. In the 1992 Cable Act, Congress amended Section 632 of the Communications Act to require the FCC to adopt customer service standards for cable operators. Congress also directed the FCC to “establish standards by which cable operators may fulfill their customer service requirements” and specified that “[s]uch standards shall include, at a minimum, requirements governing . . . communications between the cable operator and the subscriber (including standards governing bills and refunds.”

The FCC implemented the required customer service standards in 1993, and through further streamlining in 1999, created a new Subpart T in its rules to cover the notice requirements. Subpart T contains not only the requirement for MVPDs to provide subscribers with certain written information, at the time of installation, at least annually, and at any time upon request, but further various types of written communications. This includes:

- Information provided to consumers about the deletion or repositioning of broadcast signals;
- General information about services offered;
- Rate and service changes;
- Charges for customer service changes;
- Basic tier availability;
- Availability of signals;
- Equipment compatibility offers; and
- Consumer education program on compatibility.

Compliance. In accordance with its Declaratory Ruling last year on annual notices, the FCC will now permit MVPDs to send all general Subpart T notices to subscribers electronically if the cable operator sends the information to a verified e-mail address and provides a mechanism for customers to opt out of e-mail delivery and continue to receive paper notices.

For an email address to be verified for purposes of this rule, it must be an e-mail address that:

- (i) The customer has provided to the cable operator (and not *vice versa*);
- (ii) The customer regularly uses to communicate with the cable operator; or

- (iii) Has been confirmed by the customer as an appropriate vehicle for the delivery of notices.

For example, an email address that a cable operator supplies to a customer when they sign up for its broadband Internet access service would not, standing alone, qualify as a verified e-mail contact without an additional indication from the customer that they use that address and that the address may be used as an appropriate means for delivering notices.

Each e-mailed notice must also inform the customer that they may request and receive a paper version of the notice instead of e-mail delivery and must clearly and prominently include a telephone number which the customer can call to opt out of e-mail notifications.

Additional Action. The Order also permits delivery via verified email of the privacy notices that MVPDs must send to subscribers and allows MVPDs to respond to certain consumer requests and billing dispute complaints by email if the consumer used email to file the complaint or asks for a response via email. In addition, the Order eliminates two outdated notice requirements (covering notices related to scrambling and related equipment compatibility offers and education) in light of technological advances and market changes in the cable industry. The FCC also adopted a Further Notice of Proposed Rulemaking that seeks comment on whether subscribers should have the option to receive notices through other electronic means such as texts or apps.

Effective Date. The changes to the FCC's rules will become effective upon the date specified in a notice published in the Federal Register.

If you have any questions about customer notice or other regulatory requirements, please contact Scott Friedman at (314) 462-9000 or sfriedman@cinnamonmueller.com.

December 20, 2018 Accessible User Interfaces Deadline Approaching

On November 5, 2018, the FCC's Media Bureau released a [Public Notice](#) reminding smaller and mid-sized MVPDs that they must comply with the FCC's accessible user interfaces rules by December 20, 2018. This followed the Bureau's November 2, 2018 [Order](#) which granted two waivers requested by the American Cable Association.

All small and mid-sized MVPDs should take steps to come into compliance by the December 20, 2018 deadline or confirm that they qualify for either of the two ACA waivers.

Background. On October 31, 2013, the FCC released an [Order](#) implementing portions of the Twenty-First Century Communications and Video Accessibility Act of 2010. The Order requires navigation devices, provided by "covered entities" (including MVPDs) upon request by certain disabled persons, to (i) include features that would audibly describe certain on-screen menu functions to make them accessible to individuals who are blind or visually impaired; and (ii) offer easy access to closed-captioning capabilities.

Navigation devices include converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over MVPD systems using conditional access functionality. An operator that only provides a cable channel providing program listing, often in the form of a scrolling grid, is not subject to the accessibility requirements.

Specifically, the blind and visually impaired must be able to audibly access nine essential functions on navigation devices:

- Channel/Program Selection
- Configuration – Setup
- Configuration – CC Options
- Display Configuration Info
- Input Selection
- Display Channel/Program Information
- Configuration – CC Control
- Configuration – Video Description Control;
- Playback Functions

Power On/Off and Volume Adjust/Mute functions must be made accessible as well, though not necessarily audibly accessible. In addition, navigation devices must provide access to closed captioning through a mechanism reasonably comparable to a button, key, or icon.

Compliance Deadlines. Larger MVPDs were required to comply beginning December 20, 2016. MVPDs with 400,000 or fewer subscribers and for those systems with 20,000 or fewer subscribers (for all except the largest MVPDs) were given an additional two years, until December 20, 2018, to comply.

ACA Waiver. The Media Bureau’s Order granted two separate waivers requested by ACA. First, the Bureau granted ACA’s request for a limited waiver of the accessible user interfaces requirements for certain mid- sized or smaller systems that utilize quadrature amplified modulation (QAM), as they apply to the system’s two-way service offerings (e.g., video on demand). Additionally, the Bureau granted ACA’s request for a waiver of the accessible user interfaces requirements for certain small cable systems that offer any video programming channels in only analog format or do not offer broadband Internet access service to their residential video subscribers.

MVPDs that qualify are subject to additional notification requirements and conditions as set forth in the Order granting the waivers.

If My Company Does Not Qualify for a Waiver, How Do We Comply? MVPDs must offer accessible navigation devices in the same manner and cost as other navigation devices and must make them available through the same means. While MVPDs must only provide devices “upon request,” the devices must be provided within a time comparable to that within which MVPDs provide navigation devices generally to other customers. MVPDs must also make the availability of compliant accessible navigation devices known in response to customer inquiries regarding service and equipment, and prominently display information about accessible navigation devices on their websites.

MVPDs have flexibility to decide which of the devices they offer will contain accessibility features, but they must provide the accessible device at no additional charge. For example, if the only accessible device an MVPD makes available is a more expensive device being offered by the MVPD because of its sophisticated features, and a blind or visually impaired consumer requests an accessible lower-end device, then the MVPD must provide the accessible device with the sophisticated features at the lower price. In this situation, however, the MVPD may verify the requesting subscribers’ disability. MVPDs can also rely on separate equipment or software (e.g., a tablet with an accessibility app) to meet their compliance obligations.

Other Compliance Defenses. To the extent MVPDs can demonstrate that compliance is not “achievable,” they would have a defense against compliance complaints. Achievability is

determined based on a four-factor analysis that examines the nature and cost of compliance, the technical and economic impact on the entity, the entity's type of operations, and the extent to which they already offer accessible services or equipment. MVPDs may also proactively raise an achievability defense.

If you have questions regarding the FCC's accessibility rules, please contact Scott Friedman at (314) 462-9000 or sfriedman@cinnamonmueller.com or Bruce Beard at (314) 394-1535 or bbeard@cinnamonmueller.com.

Please visit our website at www.cinnamonmueller.com to learn more about our lawyers and practice. You can reach Cinnamon Mueller at (314) 462-9000. *This update is provided by the law firm of Cinnamon Mueller. The document is intended for informational purposes only as a service to clients of Cinnamon Mueller. It is not intended to provide specific legal advice or to substitute obtaining appropriate legal counsel. We encourage you to consult with counsel to address special compliance issues and for assistance in negotiating or handling any such matter referred to in the update.*