

UPDATE October 6, 2020

FCC Revises Cable Operator Rate and Service Change Notice Requirements

On October 1, 2020, the FCC released a [Report and Order](#) revising its regulations governing the rate and service change notices that cable operators must provide subscribers and local franchise authorities (“LFAs”).

Most importantly, the FCC amended its rules to clarify that notice only must be provided to subscribers “as soon as possible” when a retransmission consent or programming carriage negotiation fails in the last 30 days of a contract.

Background. Under the Communications Act and FCC regulations, cable operators must provide certain notices to subscribers, broadcasters and LFAs. Two specific notice requirements are at issue here:

- Section 76.1601 of the FCC’s rules requires cable operators to provide 30 days’ advance notice to broadcast television stations and subscribers of the deletion or reposition of any station.
- Section 76.1603 of the FCC’s rules requires cable operators to:
 - Notify subscribers of “any changes in rates, programming services or channel positions” as soon as possible in writing and 30 days in advance if the change is within the control of the cable operator.
 - Notify LFAs 30 days “before implementing any rate or service change.”
 - Provide written notice to subscribers 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.

Retransmission Consent and Programming Notices. The FCC clarified that cable operators must only provide notice to subscribers as soon as possible if a retransmission consent or programming carriage negotiation leads to the loss of a channel when such negotiation is within the final 30 days of a contract. Moreover, the FCC found that bombarding subscribers with notices during the final stages of a negotiation would be counterintuitive and instead devised a unique notice method separate from the typical “any reasonable written means” standard.

Under this new method, cable operators may provide notice of a failed negotiation through other direct and reliable written means that can reach subscribers more quickly. This includes use of a “channel slate” – “any on-screen written message that replaces the cable operator’s video feed in the event of a programming blackout and provides subscribers with information about the blackout” – on the vacant channel that appears after programming has been dropped.

To the extent that negotiations fail in advance of the contract expiration, the FCC explained that it expects the cable operator to deliver notice through other means, such as an email, before the channel goes dark. The FCC also encouraged operators to use multiple types of “written means” to the extent possible to ensure that subscribers are adequately informed.

Outside of this specific instance, cable operators must continue to give subscribers 30 days’ advance written notice of rate changes and other program changes that are within the operator’s control.

LFA Notice Requirement. The FCC also amended its rules to eliminate (in areas not subject to rate regulation) the requirement that cable operators provide 30 days’ advance notice of any changes in rates or service to LFAs. Areas still subject to rate regulation must only provide LFAs with 30 days’ advance notice of any proposed increase in the price to be charged for the basic service tier.

At the same time, the FCC implied that LFAs can adopt their own notice requirements, consistent with the Communications Act, directly through local franchise agreements.

Notice of Significant Changes to Annual Notice. Finally, the FCC eliminated the requirement that cable operators provide notice of any significant change to the information required in annual notices. The FCC explained 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.

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

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