

ALERT

FCC Seeks Public Comment on Television Blackout Reporting Requirements

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Members of the Federal Communications Commission (FCC) have long expressed concern about the consumer impacts of so-called retransmission consent “blackouts,” which occur when a multichannel video programming distributor (MVPD) and broadcaster fail to renew their retransmission consent agreement—resulting in the “blackout” of the broadcast station on the MVPD. At the same time, however, the Commission has traditionally taken a hands-off approach to what are private contractual disputes.

On December 21, 2023, the FCC released a Notice of Proposed Rulemaking (NPRM) that proposes to give the agency increased visibility into retransmission consent disputes. Under the proposed rules, MVPDs would need to notify the Commission when a blackout of a broadcast television station occurs for 24 hours or longer due to failed retransmission consent negotiations. Comments on the NPRM will be due 30 days after publication in the Federal Register. Reply comments will be due 30 days thereafter.

Proposed Reporting Requirements

In the NPRM, the Commission proposes that MVPDs use an online portal to report blackouts lasting more than 24 hours. The FCC seeks comment on how to implement this requirement, including:

- **Entities Responsible for Reporting:** Because of the direct impact on MVPD subscribers, the FCC proposes to require MVPDs, rather than broadcast stations, to notify the Commission of a blackout. Alternatively, the FCC seeks comment on imposing the reporting requirement on broadcast stations only or creating a joint blackout reporting requirement

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for both MVPDs and broadcasters.

- **Mandatory Reporting:** The Commission proposes that blackout reporting be mandatory to provide both the FCC and public with a comprehensive and timely understanding of blackouts on MVPDs across the country.
- **Definition of "Broadcast Station Blackout:"** The Commission proposes to define Broadcast Station Blackout as "any time an MVPD ceases retransmission of a commercial television broadcast station's signal due to a lapse of the broadcast station's consent for such retransmission." This definition would include commercial full power, class A, and low power television stations.
- **Initial Blackout Notification:** The FCC proposes that MVPDs submit an Initial Blackout Notification no later than 48 hours after the blackout begins. The notification would be available to the public and include details such as the stations no longer being retransmitted, network affiliations, affected Designated Market Areas, and the number of impacted subscribers. The NPRM seeks comment on the 48-hour window, public treatment of non-subscriber data, and confidential treatment of subscriber data.
- **Final Blackout Notification:** The Commission proposes that MVPDs submit a Final Blackout Notification within two days after retransmission of the previously blacked out station resumes. Like the Initial Blackout Notification, this information would be available to the public. The FCC invites comment on whether other information should be included.
- **Online Portal:** The FCC seeks comment on its proposed online blackout reporting portal, for which the Media Bureau would publish instructions via public notice. The portal would be designed, hosted, and administered by the FCC, like the Commission's Network Outage Reporting System (NORS).

If you are interested in filing comments or have questions, please contact one of the attorneys listed on this alert or the Wiley attorney who routinely handles your FCC matter