

**FCC FACT SHEET**\*

**Modernization of Media Regulation Initiative:**

**Elimination of Cable Channel Lineup Requirements – Sections 76.1705 and 76.1700(a)(4)**

Report and Order – MB Docket Nos. 17-105 and 18-92

**Background:** Section 76.1705 of our rules requires every cable operator “to maintain at its local office a current listing of the cable television channels” delivered by the system to its subscribers. This requirement was originally adopted in 1972 as part of the Commission’s technical standard performance rules for cable. In addition, Section 76.1700(a)(4) of our rules requires that cable operators of systems with 1,000 or more subscribers make their channel lineup available to the public via the Commission-hosted online public inspection file (OPIF). As part of the Commission’s *Modernization of Media Regulation Initiative*, the Commission issued a Notice of Proposed Rulemaking (NPRM) that tentatively concluded that the requirement to maintain a channel lineup locally is unnecessary. The NPRM also invited comment on whether the Commission should eliminate the requirement to make the channel lineup available via the OPIF on the ground that consumers have multiple other sources of information about a cable system’s current channel lineup.

**What the Order Would Do:**

- Conclude that the requirements of Sections 76.1705 and Section 76.1700(a)(4) are unnecessary as information about the channel lineups of individual cable operators is readily available through other sources, including, in many cases, the websites of the operator or third-party websites, on-screen electronic program guides, and paper guides. The Order notes that Section 76.1602(b) of the Commission’s rules separately requires cable operators to provide information to subscribers regarding the “channel positions of programming carried on the system” and “products and services offered” at the time of installation, at least annually, and at any time upon request.
- Eliminate the requirement in Section 76.1705 that cable operators maintain at their local office a current listing of the cable television channels that each cable system delivers to its subscribers.
- Eliminate the requirement in Section 76.1700(a)(4) that certain cable operators make their channel lineup available via their OPIF.

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\* This document is being released as part of a "permit-but-disclose" proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in MB Docket No. 18-92, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs/>). Before filing, participants should familiarize themselves with the Commission’s *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. *See* 47 CFR § 1.1200 *et seq.*

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
Channel Lineup Requirements – Sections 76.1705 ) MB Docket No. 18-92
and 76.1700(a)(4) )
Modernization of Media Regulation Initiative ) MB Docket No. 17-105

REPORT AND ORDER\*

Adopted: []

Released: []

By the Commission:

I. INTRODUCTION

1. In this Report and Order, we eliminate two unnecessary rules pertaining to cable operators’ channel lineups. First, we eliminate Section 76.1705, which requires cable operators to maintain at their local office a current listing of the cable television channels that each cable system delivers to its subscribers.1 Second, we eliminate the requirement in Section 76.1700(a)(4) that certain cable operators make their channel lineup available through their Commission-hosted online public inspection file.2 We conclude that these requirements are unnecessary as channel lineups are readily available to consumers through a variety of other means. Through this proceeding, we continue our efforts to modernize our regulations and reduce unnecessary requirements that can impede competition and innovation in the media marketplace.3

\* This document has been circulated for tentative consideration by the Commission at its April 2019 open meeting. The issues referenced in this document and the Commission’s ultimate resolutions of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairman has determined that, in the interest of promoting the public’s ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The Commission’s ex parte rules apply and presentations are subject to “permit-but-disclose” ex parte rules. See, e.g., 47 CFR §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR §§ 1.1200(a), 1.1203.

1 See 47 CFR § 76.1705 (“The operator of each cable television system shall maintain at its local office a current listing of the cable television channels which that system delivers to its subscribers.”).

2 See 47 CFR § 76.1700(a)(4). This rule requires that cable operators with 1,000 or more subscribers maintain in the online public file “a current listing of the cable television channels which that system delivers to its subscribers...”

3 See Commission Launches Modernization of Media Regulation Initiative, Public Notice, 32 FCC Rcd 4406 (MB 2017) (Media Modernization PN) (initiating a review of rules applicable to media entities to eliminate or modify regulations that are outdated, unnecessary or unduly burdensome).

## II. BACKGROUND AND DISCUSSION

### A. Requirement to Maintain a Channel Lineup Locally (Section 76.1705)

2. As part of our Modernization of Media Regulation Initiative, last year we released a *Notice of Proposed Rulemaking* tentatively concluding that the requirement in Section 76.1705 that cable operators maintain a channel lineup locally is outdated and unnecessary and should be eliminated.<sup>4</sup> In response, nearly all commenters agree that it is no longer necessary for cable operators to maintain channel lineup information at their local offices.<sup>5</sup> Specifically, NCTA, ACA, and ITTA maintain that channel lineups are now available in numerous places, making the requirement to maintain a lineup locally unnecessary.<sup>6</sup> Commenters also generally agree with our observation in the *NPRM* that few, if any, consumers interested in channel lineup information are likely to access this information by visiting an operator's local office as other sources of channel lineup information can be viewed far more quickly and easily.<sup>7</sup>

3. We adopt our tentative conclusion and eliminate Section 76.1705. As discussed in the *NPRM*, this requirement was originally adopted nearly 50 years ago as part of the Commission's technical standard performance rules for cable.<sup>8</sup> Among the Commission's goals in the *1972 Cable Order* was to

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<sup>4</sup> See *Channel Lineup Requirements – Sections 76.1705 and 76.1700(a)(4), Modernization of Media Regulation Initiative*, Notice of Proposed Rulemaking, 33 FCC Rcd 4323, para 1 (2018) (*NPRM*). In the *Media Modernization PN*, the Commission sought comment generally on which of its rules should be modified or eliminated. See *Media Modernization PN*, 32 FCC Rcd at 4406. The Commission received a number of comments suggesting that the Commission should eliminate, or at least review, the requirement that cable providers maintain a channel lineup locally and the requirement that channel lineup information be maintained in the online public file. See Comments, MB Docket No. 17-105, of NCTA (July 5, 2017) at 27 and Verizon (July 5, 2017) at 7-8; Reply Comments, MB Docket No. 17-105, of Frontier at 4 and ITTA at 4.

<sup>5</sup> See Comments of NCTA – The Internet & Television Association (NCTA) at 2 (“[S]ection 76.1705 is a relic of the Commission’s earliest cable technical standards, and has long outlived its usefulness.”); Comments of the National Association of Broadcasters (NAB) at 3-4 (“[W]e see no reason to retain the rule that requires cable operators to maintain channel lineups in their local offices.”); Comments of the American Cable Association (ACA) at 2 (“ACA agrees with the Commission that Section 76.1705 is ‘unnecessary and outdated,’ and thus is ripe for elimination as part of the Commission’s broader efforts to modernize its media regulations.”); Comments of the Alliance for Community Media (ACM) at 1-2 (“We agree with the *NPRM*’s conclusion that the requirement for every cable operator ‘to maintain at its local offices a current listing of the cable television channels’ serves no useful purpose.”); Comments of the National Association of Telecommunications Officers and Advisors (NATOA) at 2 (“NATOA does not disagree with the assumption that subscribers and potential subscribers are unlikely to go to a cable operator’s local office to view a channel lineup that is readily available and more convenient to access online. Where cable operators provide online access to channel lineups, retention of the same information in the local office should be unnecessary.”). See also Reply Comments of ITTA-The Voice of America’s Broadband Providers (ITTA) at 2. Only one commenter, CCTV Center for Media & Democracy (CCTV), objected to the elimination of Section 76.1705. See CCTV Comments at 1-2. As discussed below, we disagree with CCTV. See *infra* para. 5.

<sup>6</sup> See NCTA Comments at 2 (“Customers and regulators have many means of accessing [channel lineup] information today”); ACA Comments at 3 (“[C]able operators make channel lineups available to the public through a wide variety of sources and methods designed to disseminate the information as widely as possible, including company websites, on-screen electronic programming guides, and paper guides.”); ITTA Comments at 2 (“information about the channel lineups of individual cable operators is now available through myriad other sources.”).

<sup>7</sup> See *NPRM*, 33 FCC Rcd at 4324, para. 3. See also NCTA Comments at 2, ITTA Comments at 2, and NATOA Comments at 2.

<sup>8</sup> See *NPRM*, 33 FCC Rcd at 4324, para. 2. See also *Amendment of Part 74, Subpart K, of the Commission’s Rules and Regulations Relative to Community Antenna Television Systems, et al.*, Cable Television Report and Order, 36 FCC 2d 143, Appendix A (1972) (*1972 Cable Order*).

ensure that the “channels delivered to subscribers conform to the capability of the television broadcast receiver.”<sup>9</sup> While the Commission did not explain in its order exactly why it believed it was necessary for a system to maintain at its local office a list of the channels it delivers, it appears that the requirement was intended to help the Commission verify compliance with technical performance standards that applied to certain cable channels at that time.<sup>10</sup>

4. Regardless of the original purpose of the requirement to maintain a channel lineup locally, we conclude that the requirement is no longer necessary as information about the channel lineups of individual cable operators is available today through other sources including, in many cases, the operator’s own website,<sup>11</sup> on-screen electronic program guides, and paper guides.<sup>12</sup> These sources are more readily and easily accessible to consumers and others than the operator’s local office. In addition, as we noted in the *NPRM*, Section 76.1602(b) of the Commission’s rules separately requires cable operators to provide information to subscribers regarding the “channel positions of programming carried on the system” and “products and services offered” at the time of installation, at least annually, and at any time upon request.<sup>13</sup> Thus, channel lineup information is actively sent to cable subscribers at least once a year and is required to be made available upon request at any time.<sup>14</sup> Moreover, as several commenters point out, cable operators have strong economic incentives to ensure that channel lineup information reaches both existing and prospective customers so that they can better compete in the video marketplace.<sup>15</sup> Commenters note that customers have a choice of MVPDs and not making this information easily available would almost certainly result in the loss of potential and existing customers.<sup>16</sup>

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<sup>9</sup> *1972 Cable Order*, 36 FCC 2d at 200, para. 155. At the time the *1972 Cable Order* was adopted, TV tuners were not capable of receiving all cable signals. Today, for the vast majority of cable subscribers, reception issues are addressed by set top boxes and cable QAM tuners in TV sets.

<sup>10</sup> See *NPRM*, 33 FCC Rcd at 4324, para. 2, note 8.

<sup>11</sup> See, e.g., <https://www.xfinity.com/support/local-channel-lineup/> (Comcast channel listings); <https://www.cox.com/residential/tv/channel-lineup.html> (Cox channel listings); <https://www.rcn.com/dc-metro/digital-cable-tv/channel-lineups/> (RCN channel listings in Washington, D.C.); <https://www.spectrum.com/browse/content/new-channel-lineup.html> (Charter channel listings).

<sup>12</sup> The record reflects that the vast majority of cable operators make channel lineup information available online, either on their own website or a third-party website. According to ACA, which conducted a survey of members who operate systems with fewer than 1,000 subscribers, all but a few maintain a company website with channel lineup information. See ACA Comments at 3. Operators that either do not maintain a website or do not post channel lineup information on the site provide lineup information in alternate ways, including on independent websites such as Zap2it.com and TVGuide.com and, when requested, over the phone, by email, or in person, as required by our rules. *Id.* at 3-4, note 10.

<sup>13</sup> See *NPRM*, 33 FCC Rcd at 4326, para. 7. See also 47 CFR § 76.1602(b)(1), (5). The provision states: “Effective July 1, 1993, the cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request: . . . (1) Products and services offered; . . . (5) Channel positions of programming carried on the system...” The Commission recently affirmed that written information that cable operators must provide to their subscribers pursuant to Section 76.1602(b) may be provided electronically via email distribution. *Electronic Delivery of MVPD Communications*, MB Docket Nos. 17-105, 17-317, Report and Order and Further Notice of Proposed Rulemaking, FCC 18-166, 2018 WL 6061286, at \*4, para. 11 (Nov. 16, 2018).

<sup>14</sup> *Id.*

<sup>15</sup> See NCTA Comments at 2; ACA Comments at 2; ITTA Reply Comments at 4, ACA Reply Comments at 2. *But see* ACM Comments at 3 (arguing that cable operators may not have an economic incentive to provide complete information regarding PEG channels). See also *infra* note 39.

<sup>16</sup> See ACA Comments at 2 and ITTA Reply Comments at 2-3.

5. Thus, we conclude that because channel lineup information is available from many sources today and operators have an incentive to ensure that this information is widely disseminated, the burden imposed by Section 76.1705 is unnecessary, and it is appropriate to eliminate this regulation. In reaching this conclusion, we disagree with CCTV that cable operators should continue to be required to provide channel lineups at local offices because PEG channels and program details may not be included in cable operators' electronic program guides.<sup>17</sup> First, we note that our rules do not require cable operators to provide "program details" in their channel lineups, so our action today will have no impact on the dissemination of program details by operators. Moreover, there is no evidence in the record that the channel lineup information in an operator's local office would be different from that in an electronic program guide or that members of the public visit operators' local offices to obtain channel lineups in order to see which channels are PEG channels. Thus, retaining Section 76.1705 would not assure that information regarding PEG channels would be made available in a manner that would satisfy CCTV or produce any meaningful benefit.

**B. Requirement to Maintain a Channel Lineup in the Online Public File (Section 76.1700(a)(4))**

6. We also eliminate the requirement in Section 76.1700(a)(4) of our rules that cable operators make channel lineup information available for public inspection through the online public file hosted by the Commission.<sup>18</sup> Similar to our determination with respect to Section 76.1705, we conclude that the requirement in Section 76.1700(a)(4) is unnecessary in light of the widespread availability of channel lineup information from other sources that are more likely to be accessed by customers and others seeking this information.<sup>19</sup>

7. As discussed in the *NPRM*, in 2016, the Commission expanded the list of entities required to maintain an online public file to include, among others, operators of cable systems with at least 1000 subscribers.<sup>20</sup> In the *Expanded Online Public File Order*, the Commission required cable operators subject to the online file requirement to comply with Section 76.1700(a)(4) either by uploading to the online public file information regarding their current channel lineup, and keeping the information up-to-date, or by providing a link in the online file to the channel lineup maintained by the operator at another online location.<sup>21</sup> In the *NPRM* in this proceeding, we invited comment on whether we should eliminate the requirement that cable operators make channel lineup information available via the online public file on the ground that consumers have multiple other sources of information about a cable

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<sup>17</sup> CCTV states that "[i]t is important for the Commissioners to understand that in Vermont, we cannot presume that our channels and their program details will be found on the Vermont Comcast system." CCTV Comments at 1. According to CCTV, Comcast opposes a requirement imposed by the Vermont Public Utility Commission that Comcast provide information about public, educational, and governmental (PEG) access channels on its electronic program guides. *Id.* at 1-2. Therefore, according to CCTV, cable operators should continue to be required to provide channel lineups at local offices. *Id.* at 2.

<sup>18</sup> See *supra* note 2.

<sup>19</sup> Once the rule changes adopted in this proceeding are effective, the Commission staff will revise the online public file database to remove the "Channels Delivered" folder that is currently in every cable public file.

<sup>20</sup> See *NPRM*, 33 FCC Rcd at 4325, para. 5. See also *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Report and Order, 31 FCC Rcd 526 (2016) (*Expanded Online Public File Order*). In the *Expanded Online Public File Order*, the Commission specifically exempted cable systems with fewer than 1000 subscribers from all online public file requirements. *Id.* at 546, para. 50. The Commission had previously established the online public file database for use by television broadcasters. See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535 (2012).

<sup>21</sup> See *Expanded Online Public File Order*, 31 FCC Rcd at 549, para 60.

system's current channel lineup.<sup>22</sup> Commenters in favor of eliminating the rule argue generally that channel lineup information is available today from multiple other sources, making the rule unnecessary. Those opposed to eliminating the rule argue generally that it helps ensure that broadcasters and regulators as well as consumers have access to accurate and up-to-date channel lineup information.<sup>23</sup>

8. We agree with NCTA, ACA, and ITTA that, because it is now easy to access channel lineup information from company websites, on-screen electronic program guides, and paper guides, it is unnecessary to require cable operators to also make channel lineup information available via the online public file.<sup>24</sup> We agree with these commenters that consumers seeking channel lineup information are more likely to look first to these alternate sources of information rather than the Commission's online public file database.<sup>25</sup> It is most likely that current subscribers would first access their cable operator's electronic program guide or website to obtain channel lineup information. Prospective customers also are more likely to look first to a cable provider's website to determine what channels it delivers.<sup>26</sup> In addition, as noted above, operators are also required to make channel lineup information available upon request.<sup>27</sup> Moreover, we note that DBS providers are not currently required to post channel lineup information in their online files.<sup>28</sup> Thus, eliminating Section 76.1700(a)(4) will establish regulatory parity between cable operators and DBS providers with respect to channel lineup information. We note that no commenter argues that it is difficult to access channel lineup information for DBS providers<sup>29</sup> or for cable systems with fewer than 1,000 subscribers which are not required to maintain an online public file.<sup>30</sup> Although we note that some commenters, including local regulators,<sup>31</sup> broadcasters,<sup>32</sup> and an organization

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<sup>22</sup> See *NPRM*, 33 FCC Rcd at 4325-26, para. 5-6. As noted above, some commenters responding to the *Media Modernization PN* urged us to consider eliminating this requirement. See *supra* note 4.

<sup>23</sup> Three commenters request not only that we retain the requirement in Section 76.1700(a)(4), but also require cable operators to maintain in their online public file a history of their channel lineups. See Comments of NATOA at 3 (urging the Commission to clarify that cable operators must retain in the online file "histories of their channel lineups over a reasonable period of time."). See also ACM Comments at 3; Boston Reply Comments at 3-4. These commenters argue that such historical information would help the Commission and local franchising authorities review compliance with requirements that cable operators provide advance notice to subscribers of changes in their channel lineup. *Id.* See also 47 CFR § 76.1603 (requiring cable operators to notify customers in advance of changes "in rates, programming services or channel positions"). This issue, which would expand existing online public file obligations with respect to channel lineup information, was not addressed in the *NPRM* and is beyond the scope of this proceeding. In any event, we note that if the Commission has reason to believe that a cable operator is not in compliance with our rules, it may require the operator to provide any relevant information, including historical channel lineup information, to Commission staff. See 47 U.S.C. § 403. As noted below, LFAs are free to adopt their own requirements that go beyond Commission rules. See *infra* para. 10 and note 41.

<sup>24</sup> See NCTA Comments at 3; ACA Comments at 3; ITTA Reply Comments at 3-4.

<sup>25</sup> See NCTA Comments at 3; ACA Comments at 3; ITTA Reply Comments at 4.

<sup>26</sup> NAB argues that electronic program guides do not allow consumers to compare different operators and do not serve as a source of information for broadcasters or regulators. See NAB Comments at 3. While we recognize that these guides are not available to those who do not currently subscribe to the operator's service, lineups maintained on the operator's website or a third-party site are available to all.

<sup>27</sup> See *supra* para. 4 and note 12.

<sup>28</sup> See *NPRM*, 33 FCC Rcd at 4326, para. 7.

<sup>29</sup> See *id.* (seeking comment on whether channel lineup information of DBS providers is easily accessible).

<sup>30</sup> See *supra* para. 7 and note 20.

<sup>31</sup> See NATOA Comments at 2 ("[W]e urge the Commission to retain the online public file requirement to promote access and transparency.") See also City of Boston, Massachusetts Office of Broadband and Cable (Boston) Reply

(continued....)

representing PEG channels<sup>33</sup> urge us to retain this online public file requirement, we find that channel lineup information can just as easily be accessed through other online means such as the cable operator's or a third-party website.<sup>34</sup>

9. We disagree with NAB that other sources of channel lineup information are not an adequate substitute for the requirement that channel lineups be placed in the online public file.<sup>35</sup> As discussed above, we believe that channel lineup information is easily accessible to the public, broadcasters, and regulators via the cable operator's own website or a third-party site. We also disagree with those commenters who argue that alternate sources of channel lineup information are less likely to be up-to-date than the information in the online public file.<sup>36</sup> In fact, many cable operators currently elect to include a link in the online file to the channel lineup they maintain online elsewhere.<sup>37</sup> Thus, for these operators the information available via the operator's website or another website is the same as that in the online file. We also believe that all cable operators have a marketplace incentive to ensure that the

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Comments at 4-5 (urging the Commission to require cable operators to maintain complete channel lineups in their online public files as well as historical lineup information).

<sup>32</sup> See NAB Comments at 1-4. NAB notes that broadcasters frequently rely on channel lineup information to determine whether their stations are in fact being carried pursuant to their mandatory carriage election or retransmission consent agreement, or are perhaps being carried without the broadcaster's permission. Broadcasters also refer to channel lineups to determine whether a station is being carried on the channel position specified in a retransmission consent agreement or requested in a must carry election letter. *Id.* at 2-3.

<sup>33</sup> See ACM Comments at 1 ("Consumers, local and state franchising authorities, the Commission and our members have an interest in making sure that accurate records of cable channel lineups are maintained in online public files.")

<sup>34</sup> We decline to impose new public file requirements on cable systems with fewer than 1,000 subscribers. As noted above, such systems are exempt from online public file requirements (*see supra* para. 7 and note 20), but they must maintain local public inspection files. *See NPRM*, 33 FCC Rcd at 4326-27, para. 9 and note 23. In addition, these smaller cable operators are currently subject to the requirement in Section 76.1705, being eliminated in this Order, that they maintain a copy of their current channel lineup locally. *Id.* In the *NPRM*, we asked whether, if we eliminate Section 76.1705, there will continue to be adequate access to information about the channels delivered by smaller cable systems and whether we should require them to continue to make channel lineup information available locally or make it available online. *Id.* at para. 9. No commenter that addressed this issue with respect to small cable systems expressed concern that these systems would not make channel lineup information available if Section 76.1705 were eliminated or advocated in favor of maintaining the requirement in Section 76.1705 for such systems or requiring them to make channel lineup information available online. Consistent with our conclusions regarding larger cable systems, we believe that operators of smaller systems also routinely make their channel lineups available through other sources and have an economic incentive to ensure that information about their channel lineups is widely disseminated. *See supra* para. 4. Moreover, given the ongoing relationship between the cable operator and the LFA, we believe that LFAs will not experience any difficulty in obtaining channel lineup information upon request should they not be able to otherwise locate it online. Accordingly, we conclude that no new regulatory mandates with respect to channel lineup information are necessary to ensure that adequate information is available regarding the channels delivered by these smaller cable systems.

<sup>35</sup> See NAB Comments at 3 ("No other source of channel lineup information: (1) is easily accessible to the public, broadcasters, and regulators; (2) is required to be available, accurate, and up-to-date; and (3) ensures that the cable operator responsible for the lineup can be held accountable for the information provided.")

<sup>36</sup> *Id.* See also ACM Comments at 2.

<sup>37</sup> See ACA Reply Comments at 3.

channel lineup information they disseminate to the public is accurate, making a regulatory mandate unnecessary.<sup>38</sup>

10. Two commenters claim that channel lineups maintained online by cable operators do not provide accurate and complete listings with respect to PEG channels.<sup>39</sup> Commenters further argue that cable operators commonly do not include information about PEG channels in electronic program guides.<sup>40</sup> There is no evidence in the record that the channel lineups maintained in operators' online public files differ from those on the operators' own websites, third-party websites, or in electronic program guides. While we strongly encourage all cable operators to ensure that all their channel listings are accurate and complete, we also note that local franchising authorities have their own customer service authority<sup>41</sup> and the ability to adopt standards regarding PEG channel listings.

### III. PROCEDURAL MATTERS

11. *Final Regulatory Flexibility Analysis.* – As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>42</sup> the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Order. The FRFA is set forth in Appendix B.

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<sup>38</sup> *Id.* See also *supra* para. 4. We note that, in the case of a carriage election dispute, whether or not the broadcaster was able to access accurate information about the channels being carried by the cable operator is a factor that could affect our analysis of such a proceeding.

<sup>39</sup> See ACM Comments at 2 (“...it is incorrect to assume that [cable operator websites] provide accurate or complete local listings, particularly as it related to PEG channels or that operators always have an economic incentive to provide accurate information to consumers.”). See also Boston Reply Comments at 4 (“cable operators commonly exclude relevant programming information, particularly that pertaining to public, educational, and governmental...channels and programming, from their online promotional materials.”). To test the accuracy of channel listings for PEG channels on cable operator websites, ACM compared the websites of three cable providers in Montgomery County, Maryland: Comcast, Verizon, and RCN. According to ACM, only RCN’s website provided an accurate listing of available PEG channels. *Id.* at 2-3. In its Reply Comments, ACA argues that, using the website links provided by ACM, it was “very easily” able to find the channel locations of eight PEG channel on Comcast and nine on Verizon. ACA Reply Comments at 4. ACA states that “there may be many reasons” for the discrepancy in search results between ACM and ACA, “but given that the economic incentives weigh in favor of making information available, ACA urges the Commission not to give too much weight to ACM’s anecdotal evidence.” *Id.* We agree that cable operators have an economic incentive to provide complete and accurate channel listings. We also note that operators incur costs related to carrying every channel and would derive no benefit from failing to provide complete information about the channels they deliver. See also *infra* note 40. Finally, we note that the rules at issue in this proceeding relate to channel listings only, not program listings. See *supra* para 5.

<sup>40</sup> See Boston Reply Comments at 4; CCTV Comments at 1-2. ACM questions whether cable operators have an economic incentive to carry PEG channels “from which they derive no direct revenue.” ACM Comments at 3. ACA replies that, while cable operators “derive some revenue” from inserting ads into cable programming streams (which they cannot do with PEG channels), the vast majority of their revenue comes from subscriber fees. ACA Reply Comments at 5, note 13. Accordingly, ACA argues there are very strong incentives for providing accurate and complete information about all channel offerings to existing and potential customers. *Id.*

<sup>41</sup> See *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992*, Second Report and Order, 22 FCC Rcd 19633, 19646, para. 27 (2007) (Section 632(d)(2) of the Communications Act, 47 U.S.C. §552(d)(2), “makes clear that Commission standards are a floor for customer service requirements, rather than a ceiling, and thus do not preclude LFAs from adopting stricter customer service requirements.”).

<sup>42</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).



12. *Paperwork Reduction Act Analysis.* – This document eliminates, and thus does not contain new or revised, information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, 44 U.S.C. § 3501-3520. In addition, therefore, it does not contain any new or modified “information burden for small business concerns with fewer than 25 employees” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, 44 U.S.C. § 3506(c)(4).

13. *Congressional Review Act.* – The Commission will send a copy of this Order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

#### IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in Sections 1, 4(i), 4(j), 303(r), 601, and 624(e) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 303(r), 521, and 544(e), the Report and Order **IS ADOPTED**.

15. **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.<sup>43</sup>

16. **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

17. **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).

18. **IT IS FURTHER ORDERED** that should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 18-92 shall be **TERMINATED** and its docket closed.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>43</sup> These rules serve to “reliev[e] a restriction.” 5 U.S.C. § 553(d)(1).

**APPENDIX A****Final Rules**

Part 76 of Title 47 of the U.S. Code of Federal Regulations is amended to read 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. Section 76.1700(a)(4) is removed and reserved.

3. Section 76.1705 is removed and reserved.

## APPENDIX B

## Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking in this proceeding.<sup>2</sup> The Federal Communications Commission (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 Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>3</sup>

**A. Need for, and Objectives of, the Report and Order**

2. In this *Report and Order*, we eliminate our rules requiring cable operators to maintain copies of their channel lineups. First, we eliminate Section 76.1705, which requires cable operators to maintain at their local office a current listing of the cable television channels that each cable system delivers to its subscribers.<sup>4</sup> Second, we eliminate the requirement in Section 76.1700(a)(4) that certain cable operators make their channel lineup available through their Commission-hosted online public inspection file.<sup>5</sup> We conclude that these requirements are unnecessary as channel lineups are readily available to consumers and others through a variety of other sources including, in many cases, the operator's own website, third-party websites, on-screen electronic program guides, and paper guides. Through this proceeding, we continue our efforts to modernize our regulations and reduce unnecessary requirements that can impede competition and innovation in the media marketplace.<sup>6</sup>

**B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

3. No comments were filed in response to the IRFA.

**C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply**

4. 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.<sup>7</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>8</sup> In addition, the term "small business" has the

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (CWAAA).

<sup>2</sup> See *In the Matter of Channel Lineup Requirements – Sections 76.1705 and 76.1700(a)(4), Modernization of Media Regulation Initiative*, 33 FCC Rcd 4373, para 1 (2018) (*NPRM*).

<sup>3</sup> See 5 U.S.C. § 604.

<sup>4</sup> See 47 CFR § 76.1705 ("The operator of each cable television system shall maintain at its local office a current listing of the cable television channels which that system delivers to its subscribers.").

<sup>5</sup> See 47 CFR § 76.1700(a)(4). This rule requires that cable operators with 1,000 or more subscribers maintain in the online public file "a current listing of the cable television channels which that system delivers to its subscribers..."

<sup>6</sup> See *Commission Launches Modernization of Media Regulation Initiative*, Public Notice, 32 FCC Rcd 4406 (MB 2017) (*Media Modernization PN*) (initiating a review of rules applicable to media entities to eliminate or modify regulations that are outdated, unnecessary or unduly burdensome).

<sup>7</sup> 5 U.S.C. § 603(b)(3).

<sup>8</sup> *Id.* § 601(6).

same meaning as the term “small business concern” under the Small Business Act.<sup>9</sup> 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.<sup>10</sup> Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

5. *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.<sup>11</sup> Industry data indicate that all but nine of the 4,600 cable operators active nationwide are small under the 400,000 subscriber size standard.<sup>12</sup> In addition, under the Commission’s rate regulation rules, a “small system” is a cable system serving 15,000 or fewer subscribers.<sup>13</sup> Of the 4,600 active cable systems nationwide,<sup>14</sup> we estimate that approximately 3,900 percent have 15,000 or fewer subscribers, and 700 have more than 15,000 subscribers. Thus, under this standard as well, we estimate that most cable systems are small entities.

6. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, 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 one 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.”<sup>15</sup> There are approximately 52,403,705 cable video subscribers in the United States today.<sup>16</sup> Accordingly, an operator serving fewer than 524,037 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. Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.<sup>17</sup> 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.<sup>18</sup> Although it seems certain that some of these cable systems operators are affiliated with entities whose gross annual revenues exceed \$250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

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<sup>9</sup> *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

<sup>10</sup> 15 U.S.C. § 632.

<sup>11</sup> 47 CFR § 76.901(e).

<sup>12</sup> See SNL KAGAN, Top Cable MSOs, <https://www.snl.com/Interactivex/TopCableMSOs.aspx>.

<sup>13</sup> 47 CFR § 76.901(c).

<sup>14</sup> See FCC, Cable Operations and Licensing System (COALS), [www.fcc.gov/coals](http://www.fcc.gov/coals).

<sup>15</sup> 47 CFR § 76.901(f) & nn. 1-3.

<sup>16</sup> See SNL KAGAN at <http://www.snl.com/Interactivex/MultichannelIndustryBenchmarks.aspx>.

<sup>17</sup> See SNL KAGAN, Top Cable MSOs, <https://www.snl.com/Interactivex/TopCableMSOs.aspx>.

<sup>18</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission’s rules. See 47 CFR § 76.901(f).

**D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

7. The Commission anticipates that the rule changes adopted in this *Report and Order* will lead to an immediate, long-term reduction in reporting, recordkeeping, and other compliance requirements for all cable operators, including small entities. Specifically, cable operators will no longer be required to maintain a listing of the channels delivered by the system at their local office, and systems with more than 1,000 subscribers will no longer be required to make their channel lineup available through their Commission-hosted online public inspection file.

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

8. 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.”<sup>19</sup>

9. The Commission considered but ultimately declined to impose new public file requirements on cable systems with fewer than 1,000 subscribers. Such systems have always been exempt from online public file requirements but must maintain local public inspection files. In addition, these smaller cable operators are currently subject to the requirement in Section 76.1705, being eliminated in this *Report and Order*, that they maintain a copy of their current channel lineup locally. In the *NPRM*, we asked whether, if we eliminate Section 76.1705, there will continue to be adequate access to information about the channels delivered by smaller cable systems and whether we should require them to continue to make channel lineup information available locally or make it available online. Consistent with our conclusions regarding larger cable systems, the Commission concluded in the *Report and Order* that operators of smaller systems also routinely make their channel lineups available through other sources and have an economic incentive to ensure that information about their channel lineups is accurate, complete, and widely disseminated. Accordingly, the Commission concludes that no new regulatory mandates with respect to channel lineup information are necessary to ensure that adequate information is available regarding the channels delivered by these smaller cable systems.

10. Overall, we believe the *Report and Order* appropriately balances the interests of the public against the interests of the entities who are subject to the rules, including those that are small entities.

**F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rule**

11. None.

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<sup>19</sup> 5 U.S.C. § 603(c)(1)-(c)(4).