

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS
APPROVING IN PART AND DISSENTING IN PART**

Re: *Channel Lineup Requirements – Sections 76.1705 and 76.1700(a)(4)*, MB Docket No. 18-92;
Modernization of Media Regulation Initiative, MB Docket No. 17-105.

Today, we vote on another item stemming from the Chairman’s “Modernization of Media Regulation” initiative. In this proceeding, the Commission looks to eliminate certain requirements for cable providers to maintain records of channels that are available to consumers at their local offices and in their online public inspection files. I previously announced the standard by which I will consider these “media modernization” items. As I stated, I will look at the narrow issue before me—typically the removal of a regulatory obligation in the media space. In addition, however, I will look at the overall record and consider whether the outcomes further our “statutory obligations and key mission.”¹

I approve this order, in part, as to the elimination of Section 76.1750 of our rules, requiring cable providers to maintain paper copies of their cable channel lineups in their local offices. In reviewing the record before us, it was clear that commenters did not generally support retention of this rule or make use of it by visiting the local offices of cable operators in search of cable channel lineup information.

But I dissent from this order, in part, as to the elimination of Section 76.1700(a)(4) of our rules, requiring cable operators to make up-to-date cable channel lineup information available through their online public files. The order concludes that this rule is “unnecessary” because viewers can now “access channel lineup information from company websites, on-screen electronic program guides, and paper guides.”² However, public files were always intended to provide consumers with access to information that was also available elsewhere. In 1965, on the heels of action that rightfully allowed greater public participation in FCC proceedings, the agency expanded public file requirements as a way to “make information to which the public already has a right more readily available, so that the public will be encouraged to play a more active part in dialogue” with regulatees and the Commission.³ The Commission determined that Congress, through legislation, had “zealously guarded the rights of the general public to be informed” and, therefore, that the agency must take steps to make “practically accessible to the public information to which it is entitled.”⁴ Despite the years that have passed, our obligation to ensure that the public is informed hasn’t changed.

In recent years, the Commission has moved the public files of broadcasters and cable operators online, in part to “make information that [providers] are already required to make publicly available more accessible while also reducing costs both for the government and the private sector.”⁵ The move to online public files has largely been viewed as a resounding success. The reasoning behind the elimination of this rule mistakes the purpose of our public file requirements and devalues our online public files.

Additionally, the item lacks the kind of thoughtful cost-benefit analysis that some of my colleagues in the majority have long sought in our items. One of the Commission’s stated priorities has

¹ *Elimination of Obligation to File Broadcast Mid-Term Report (Form 397) Under Section 73.2080(F)(2)*, Report and Order, 2019 WL 696578, at *10 (Feb. 15, 2019) (Concurring Statement of Commissioner Geoffrey Starks).

² Report and Order at para. 8.

³ *Commission’s Rules Relating to Inspection of Records*, Report and Order, 4 R.R.2d 1664, 1667, para. 11 (1965).

⁴ *Id.* at paras. 9, 12.

⁵ *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, 533, para. 15 (2016).

been rigorous and thorough review of regulatory impacts. We even created a new office, the Office of Economics and Analytics (OEA), which now reviews all circulated items specifically for this purpose. However, as this item was circulated for review, we were simply told that OEA reviewed the item and determined that the “benefits” of repealing these regulations “clearly outweigh the costs,” with no additional analysis or explanation. Because the item does not engage—in any real sense—in a cost-benefit analysis, I will briefly outline my thinking.

First, the marginal costs associated with the requirement that cable channel lineup information be included in online public files seem to be incredibly low. Truly. Providers are already required, by a rule not at issue in today’s item, to prepare and maintain this information for consumers annually, at the time of installation, and upon request (requirements, it should be mentioned, that no one in this record suggested were burdensome).⁶ The only “burden” at issue then is that of placing the channel lineup in the online public file. The cost of compliance with this specific rule is very low, if not non-existent: no commenter described the cost of compliance as particularly onerous, or overly burdensome. In fact, the way that many providers comply with the requirement is by simply uploading a link to their website⁷ – hardly a costly burden in any sense.

Second, commenters in the record outlined significant benefits associated with having access to this information through the online public file. Broadcasters and local regulators, specifically, submitted filings explaining how they utilized the online public file.⁸ Broadcasters noted that the information included in the online public file allows station owners to make sure that carriage agreements are being honored, or that stations aren’t being carried without an agreement in place. Local regulators explained how they used the lineups in the online public file to enforce their customer service standards against operators. It was also noted in the record that the rule being eliminated today requires channel lineups in the online public file to be accurate. Indeed, Section 76.1700(a)(4) requires operators to maintain a “current listing” of channels delivered to subscribers, which assures online public file users that the information is up-to-date and provides the Commission with an enforcement hook in the event of a problem.⁹

In short, I understand that it no longer makes sense to require cable channel lineups to be retained at local offices, but not so much with regard to the online filing. I fundamentally disagree with the exceedingly thin cost-benefit justification offered here today—a close read of the record before us suggests that this rule has actual benefits, with little to no actual costs. By my read, the appropriate conclusion here would be to retain the requirement to maintain this information in online public files. I requested that the item be revised to retain Section 76.1700(a)(4) of our rules, so that operators would continue to maintain current cable channel lineup information in their online public files. Unfortunately, my request was denied.

Accordingly, I approve in part and dissent in part.

Thank you to the Media Bureau staff who prepared this item for our consideration.

⁶ 47 CFR § 76.1602(b)(1), (5).

⁷ Reply Comments of the American Cable Association (ACA) at 3 (“ . . . [M]any cable operators comply with the online public inspection file requirement by posting a link to their own website, which they are permitted to do under the rules.”).

⁸ Comments of the National Association of Telecommunications Officers and Advisors (NATOA) at 3-4; Comments of the Alliance for Community Media (ACM) at 3-4; Comments of the National Association of Broadcasters (NAB) at 1-2; Reply Comments of the City of Boston, Massachusetts Office of Broadband and Cable at 2-3.

⁹ 47 CFR § 76.1700(a)(4). *See* NAB Comments at 3.