

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

In the Matter of)	
)	
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

NOTICE OF PROPOSED RULEMAKING

Adopted: April 17, 2018

Released: April 17, 2018

By the Commission: Chairman Pai and Commissioners Clyburn, and O’Rielly issuing separate statements.

Comment Date: (30 days after date of publication in the Federal Register)

Reply Comment Date: (45 days after date of publication in the Federal Register)

I. INTRODUCTION

1. In this *Notice of Proposed Rulemaking (NPRM)*, we propose to eliminate the requirement in Section 76.1705 of the Commission’s rules that cable operators maintain at their local office a current listing of the cable television channels that each cable system delivers to its subscribers.¹ We tentatively conclude that this requirement is unnecessary and outdated. In addition, we invite comment on whether we should also eliminate the requirement in Section 76.1700(a)(4) that certain cable operators make their channel lineup available via their online public inspection file.² In response to a Public Notice launching the Commission’s Modernization of Media Regulation Initiative,³ commenters asked the Commission to consider eliminating both of these requirements because channel lineup information is available from other sources and the requirements are therefore unnecessary.⁴ With this proceeding, we continue our efforts to modernize our rules and eliminate outdated and unnecessary regulatory burdens that can impede competition and innovation in the media marketplace.

II. DISCUSSION

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

2. We propose to eliminate Section 76.1705 of our rules, which requires every cable operator “to maintain at its local office a current listing of the cable television channels” delivered by the

¹ See 47 CFR § 76.1705 (stating that “[t]he 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) (requiring that cable operators of systems 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 in accordance with § 76.1705.”).

³ *Commission Launches Modernization of Media Regulation Initiative*, MB Docket No. 17-105, Public Notice, 32 FCC Rcd 4406 (MB 2017) (initiating a review of rules applicable to media entities to eliminate or modify regulations that are outdated, unnecessary or unduly burdensome).

⁴ See *infra* note 18.

system to its subscribers.⁵ This requirement was originally adopted in 1972 as part of the Commission's technical standard performance rules for cable.⁶ Among the Commission's goals in the *1972 Cable Order* was to ensure that the "channels delivered to subscribers conform to the capability of the television broadcast receiver."⁷ 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 designed to help the Commission verify compliance with technical performance standards that applied to certain cable channels at that time.⁸

3. We tentatively conclude that the requirement to maintain a channel lineup locally is outdated, unnecessary, and inconsistent with the Commission's recent efforts to improve access to information about regulated entities by making this information available online.⁹ Regardless of the original purpose of the rule, information about the channel lineups of individual cable operators is now available through other sources, including, in many cases, the websites of the operator, on-screen electronic program guides, paper guides, and the Commission-hosted online public inspection file (OPIF).¹⁰ We therefore believe that few, if any, consumers interested in channel lineup information currently

⁵ 47 CFR § 76.1705. The obligation to keep a list of channels delivered was previously codified at 47 CFR § 76.601(b). It was moved to Section 76.1705 in 1999. See *1998 Biennial Regulatory Review – Streamlining of Cable Television Services Part 76 Public File and Notice Requirements*, Report and Order, 14 FCC Rcd 4653, Appendix D (1999).

⁶ See *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*). ACA notes that, in the proceeding that led to the adoption of the *1972 Cable Order*, the Commission expressed its concern with service quality in the burgeoning cable industry which, as the Commission explained, was "rapidly evolving from its original role as a small, five-channel, reception service" toward "12-channel or larger systems" with "entry into large metropolitan centers." See ACA Comments, MB Docket No. 17-105, at 14. See also *Amendment of Subpart K of Part 74 of the Commission's Rules and Regulations with Respect to Technical Standards for Community Antenna Television Systems*, Notice of Proposed Rulemaking, 25 FCC 2d 38, 39, para. 5 (1970).

⁷ *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 TV subscribers, reception issues are addressed by set top boxes and cable QAM tuners in TV sets.

⁸ See *1972 Cable Order*, Appendix C, 36 FCC 2d at 274-275. Specifically, it appears that this requirement was intended to help the Commission distinguish what it used to refer to as 'Class I' (*i.e.*, broadcast) channels from other cable channels when the Commission's rules required testing of only such channels. See *id.* at 275 (stating, in the section that addresses objectives for technical standards, that the Commission's rules will "require that the operator of each system maintain a current listing of channels delivered to subscribers and the station or stations whose signals are delivered on each Class I cable channel."). The Commission later required testing of all analog cable channels, regardless of whether they were broadcast (Class I) or cable originated (Class II). See *Cable Technical and Operational Requirements, Review of the Technical and Operational Requirements of Part 76, Cable Television*, Report and Order, 7 FCC Rcd 2021, 2024, paras. 13-17 (1992). In 2017, the Commission declined to adopt testing requirements for digital cable channels. See *Cable Television Technical and Operational Standards*, MB Docket 12-217, 32 FCC Rcd 7754, 7760-62, paras. 14-17 (2017). We note that nearly all cable systems are currently all-digital and do not carry any analog channels. *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eighteenth Report, 32 FCC Rcd 568, 593, para. 62 (MB 2017).

⁹ See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535 (2012) ("*Television Online Public File Order*"); *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*").

¹⁰ See *supra* note 2 and *infra* para. 7 and note 21.

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.¹¹

4. We invite comment on our tentative conclusion. How often do consumers visit a cable operator's local office to view its channel lineup? Is Commission regulation in this area unnecessary because cable operators have the economic incentive to ensure that customers and prospective customers are able to find out which channels they deliver? Is there any benefit to retaining the requirement in Section 76.1705 that we should consider? For example, is there any benefit to regulators, including local franchising authorities, to having this information continue to be available locally, or can regulators easily access this information from other sources, including directly from the cable operator, without Section 76.1705? Commenters who advocate in favor of or against retaining this rule should discuss whether and how the benefits of doing so outweigh any costs.

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

5. We also invite comment on whether we should eliminate the requirement that cable operators make channel lineup information available for public inspection pursuant to Section 76.1700(a)(4) through the online public file.¹² In the *Expanded Online Public File Order*, the Commission expanded to cable operators of systems with at least 1,000 subscribers, as well as broadcast and satellite radio licensees and DBS providers, the requirement that public inspection files be posted to the Commission-hosted online public file database.¹³ In that order, the Commission also required cable operators subject to the new online file requirements¹⁴ to comply with Section 76.1700(a)(4) either by uploading to the online public file information regarding their current channel lineup, and keeping this information up-to-date, or providing a link in the online file to the channel lineup maintained by the operator at another online location.¹⁵ While the Commission recognized that cable operators may provide channel lineup information to subscribers in other ways, and that they have an incentive to present this information on their own websites, it declined to exclude this information from the list of material cable operators were required to include in the online public file as advocated by cable commenters.¹⁶ In doing so, the Commission noted that its focus in the *Expanded Online Public File* proceeding was on adapting its existing public file requirements to an online format rather than considering substantive changes to the public file rules.¹⁷

6. Several commenters in the Media Modernization proceeding have asked the Commission to eliminate the channel lineup public file requirement on the ground that consumers have multiple other sources of information about a cable system's current channel lineup, including cable operator and third-party websites, on-screen electronic programming guides, and copies of lineups provided by cable operators.¹⁸ NCTA argues that "[t]here is no indication in the record or elsewhere that consumers find the channel lineups in public inspection files to be useful at all, or that they would look to the Commission's

¹¹ See *infra* para.7.

¹² See *supra* note 2.

¹³ *Expanded Online Public File Order*, 31 FCC Rcd at 544-552, paras. 46-66. The database was initially established in 2012 for use by television broadcasters. *Television Online Public File Order*, 27 FCC Rcd 4535 (2012).

¹⁴ The Commission exempted cable systems with fewer than 1,000 subscribers from all online public file requirements. *Expanded Online Public File Order*, 31 FCC Rcd at 546, para. 50.

¹⁵ *Id.* at 549, para. 60.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ 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.

website to locate such information.”¹⁹ NCTA also notes that the Commission does not require channel lineup information to be included in the public files of DBS providers, who provide video programming options similar to cable operators.²⁰

7. We seek comment on whether there are sufficient other sources of information, apart from the online public file, available to consumers regarding cable channel lineups. In this regard, we note 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.

²¹ Is this requirement, combined with other sources of information regarding a cable system’s channel lineup, sufficient to ensure that consumers have access to information regarding the programming provided by cable operators? Is there a benefit to having information about cable systems, including channel lineup information, available all in one place in the system’s online public file? How frequently do consumers use the online public file to access channel lineup information? How do consumers currently access the channel lineup information of DBS providers who are not subject to this online posting requirement? Is such information easily accessible?

8. Absent an online public file requirement, would channel lineup information be available to consumers and others who are not subscribers to the cable system, including those interested in comparing channel offerings by competing providers? Is Commission regulation in this area unnecessary because cable operators have the economic incentive to ensure that customers and prospective customers are able to find out which channels they deliver? For example, would this information be posted conspicuously on the website of a cable provider? Should we require operators subject to Section 76.1700(a)(4) to instead put channel lineup information on their own website? If we adopt such a website requirement, should operators “maintain a current listing of the cable television channels which that systems delivers to its subscribers” on their website as our public file rule requires?²² What is the cost associated with the existing requirement that operators either upload channel lineup information to the online public file and keep this information current or provide a link in the online file to the channel lineup maintained by the operator at another online location? Would regulators benefit from access to channel lineup information via the online public file, particularly if we eliminate 76.1705 as proposed above? If so, how? We request that commenters address how the potential benefits of their proposal would outweigh any potential costs.

C. Small Cable Operators

9. Operators of cable systems with fewer than 1,000 subscribers are exempt from all online public file requirements, including the requirement to make channel lineup information available via the online file, but they must maintain local public inspection files and are subject to the requirement in Section 76.1705 that they maintain a copy of their current channel lineup locally.²³ If we eliminate Section 76.1705, as proposed above, will there continue to be adequate access to information about the channels delivered by these smaller cable systems? To what extent do small operators make channel

¹⁹ NCTA Comments, MB Docket No. 17-105, at 27.

²⁰ See NCTA Comments, MB Docket No. 17-105, at 27.

²¹ 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. . .” See also National Cable & Telecommunications Association and American Cable Association, Petition for Declaratory Ruling, Declaratory Ruling, 32 FCC Rcd 5269 (2017) (clarifying that the written information that cable operators must provide to their subscribers pursuant to Section 76.1602(b) of the Commission’s rules may be provided via electronic distribution).

²² 47 CFR § 76.1700(a)(4).

²³ See 47 CFR § 76.1700(d); *Expanded Online Public File Order*, 31 FCC Rcd at 546, para. 50.

lineup information available via the Internet or electronic programming guides? How often do consumers visit small operators' local inspection files to view channel lineups? Is Commission regulation in this area unnecessary because operators of small cable systems have the economic incentive to ensure that customers and prospective customers are able to find out which channels they deliver? We note that all cable systems regardless of size are subject to the notification requirements in Section 76.1602(b), discussed above. Alternatively, if we eliminate Section 76.1705 but retain the requirement that cable systems subject to the online public file make channel lineup information available there, should we require that cable systems with fewer than 1,000 subscribers continue to retain channel lineup information locally, if they do not voluntarily use the online public file?²⁴ Should we instead require small cable operators to put channel lineup information on their own website? If so, should small cable operators "maintain a current listing of the cable television channels which that systems delivers to its subscribers" on their website?²⁵

III. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Analysis

10. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),²⁶ the Commission has prepared an Initial Regulatory Flexibility Act Analysis (IRFA) relating to this NPRM. The IRFA is set forth in Appendix B.

B. Initial Paperwork Reduction Act Analysis

11. This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

C. Ex Parte Presentations

12. Permit-But-Disclose. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.²⁷ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has

²⁴ Systems with fewer than 1,000 subscribers may elect to use the online public file voluntarily.

²⁵ Such a requirement would be similar to the obligation of larger cable operators to keep the channel listings in their online public file current. 47 CFR § 76.1700(a)(4).

²⁶ 5 U.S.C. § 603. The RFA, 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).

²⁷ 47 CFR §§ 1.1200 *et seq.*

made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

D. Comment Filing Procedures

13. Comments and Replies. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

14. Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C. 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

15. People with Disabilities. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the FCC's Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

E. Additional Information

16. For additional information on this proceeding, please contact Kim Matthews of the Media Bureau, Policy Division, Kim.Matthews@fcc.gov, (202) 418-2154.

IV. ORDERING CLAUSES

17. 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) this Notice of Proposed Rulemaking **IS ADOPTED**.

18. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**Proposed 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 is amended by revising paragraph (a)(4) to read as follows:

§ 76.1700 Records to be maintained by cable system operators

(a) * * *

(4) Channels delivered. The operator of each cable television system shall maintain a current listing of the cable television channels which that system delivers to its subscribers;

* * * * *

3. Section 76.1705 is removed and reserved.

APPENDIX B

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (“IRFA”) concerning the possible significant economic impact on small entities of the policies and rules proposed in the *Notice of Proposed Rulemaking (NPRM)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rule Changes

2. The *NPRM* proposes to eliminate the requirement in Section 76.1705 of the Commission’s rules that cable operators maintain at their local office a current listing of the cable television channels that each cable system delivers to its subscribers.⁴ We tentatively conclude that this requirement is unnecessary, outdated, and inconsistent with our recent efforts to make licensee information available online. The *NPRM* also seeks comment on whether the Commission should eliminate the requirement in Section 76.1700(a)(4) that cable operators of systems with 1,000 or more subscribers make a current copy of their channel lineup available via their online public inspection file.⁵ These operators may either upload information regarding their channel lineup to the online file, and keep that information current, or provide a link in their online file to the channel lineup maintained by the operator at another online location.⁶ The *NPRM* also asks if we should instead require operators subject to Section 76.1700(a)(4) to put channel lineup information on their own website and, if so, whether we should require these operators to “maintain a current listing of the cable television channels which that systems delivers to its subscribers” on their website as our public file rules currently require.

3. Operators of cable systems with fewer than 1,000 subscribers are exempt from all online public file requirements, including the requirement to make channel lineup information available via the online file, but they must maintain local public inspection files and are subject to the requirement in Section 76.1705 that they maintain a copy of their current channel lineup locally.⁷ The *NPRM* asks whether, if we eliminate Section 76.1705, there will continue to be adequate access to channel lineup information for systems with fewer than 1,000 subscribers, or whether we should instead continue to require these small operators to maintain current channel lineup information in their local public inspection files if they do not voluntarily use the online public file. The *NPRM* also asks if we should instead require small cable operators to put channel lineup information on their own website and, if so, we

¹ 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).

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ See 47 CFR § 76.1705.

⁵ See 47 CFR § 76.1700(a)(4) (requiring that cable operators of systems 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 in accordance with § 76.1705.”).

⁶ *Expanded Online Public File Order*, 31 FCC Rcd at 549, para. 60. Cable systems with fewer than 1,000 subscribers are exempt from a number of public file requirements, including the online public file, but they are subject to the requirement in Section 76.1705 that they maintain a copy of the channel lineup at the system’s local office. See 76.1700(d); *Expanded Online Public File Order*, 31 FCC Rcd at 546, para. 50.

⁷ See 47 CFR § 76.1700(d); *Expanded Online Public File Order*, 31 FCC Rcd at 546, para. 50.

should require these operators to “maintain a current listing of the cable television channels which that systems delivers to its subscribers” on their website. Our goal is to ensure that consumers have sufficient access to channel lineup information and to continue our efforts to modernize our rules and reduce regulatory burdens on cable operators by eliminating unnecessary requirements in our rules.

B. Legal Basis

4. The proposed action is authorized pursuant to Sections 1, 2, 4(i), 4(j), 303, 601 and 624(e) of the Communications Act, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 303, 521 and 624(e).

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

5. 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.⁸ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹⁰ 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.¹¹ Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

6. *Cable Companies and Systems (Rate Regulation)*. 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.¹² Industry data indicate that all but nine cable operators nationwide are small under the 400,000 subscriber size standard.¹³ In addition, under the Commission’s rate regulation rules, a “small system” is a cable system serving 15,000 or fewer subscribers.¹⁴ Of the 4,197 active cable systems nationwide,¹⁵ we estimate that approximately 85 percent have 15,000 or fewer subscribers, and the rest have more than 15,000 subscribers. Thus, under this standard as well, we estimate that most cable systems are small entities.

7. *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.”¹⁶ There are approximately 52,403,705 cable video subscribers in the United

⁸ 5 U.S.C. § 603(b)(3).

⁹ 5 U.S.C. § 601(6).

¹⁰ 5 U.S.C. § 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).

¹¹ 15 U.S.C. § 632.

¹² 47 CFR § 76.901(e).

¹³ See SNL KAGAN, Top Cable MSOs, <https://www.snl.com/Interactivex/TopCableMSOs.aspx>.

¹⁴ 47 CFR § 76.901(c).

¹⁵ See FCC, Cable Operations and Licensing System (COALS), www.fcc.gov/coals.

¹⁶ 47 CFR § 76.901(f) & nn. 1-3.

States today.¹⁷ 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.¹⁸ 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.¹⁹ 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.

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

8. The *NPRM* proposes to eliminate the requirement in Section 76.1705 of the Commission's rules that cable operators maintain at their local office a current listing of the cable television channels that each cable system delivers to its subscribers.²⁰ This rule change would reduce reporting, recordkeeping, and other compliance requirements for cable operators which are currently required to maintain a current channel lineup for each system in the cable operator's local office. In addition, the *NPRM* seeks comment on whether to eliminate the requirement in Section 76.1700(a)(4) of the Commission's rules that cable systems with 1,000 or more subscribers make a current copy of their channel lineup available via their online public inspection file.²¹ If the Commission eliminated this requirement, it would further reduce reporting, recordkeeping, and other compliance requirements for these cable operators. Alternatively, the *NPRM* asks whether cable operators subject to Section 76.1700(a)(4) should instead be required to put channel lineup information on their own website and, if so, whether we should require these operators to "maintain a current listing of the cable television channels which that systems delivers to its subscribers" on their website as our public file rules currently require.

9. Operators of cable systems with fewer than 1,000 subscribers are exempt from all online public file requirements, including the requirement to make channel lineup information available via the online file, but they must maintain local public inspection files and are subject to the requirement in Section 76.1705 that they maintain a copy of their current channel lineup locally. The *NPRM* asks whether, if we eliminate Section 76.1705, there will continue to be adequate access to channel lineup information for systems with fewer than 1,000 subscribers, or whether we should instead continue to require these small operators to maintain current channel lineup information in their local public inspection files or put this information on their own websites if they do not voluntarily use the online public file. If we adopt a website requirement, the *NPRM* asks if we should require these operators to "maintain a current listing of the cable television channels which that systems delivers to its subscribers" on their website.

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

10. 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)

¹⁷ See SNL KAGAN at <http://www.snl.com/Interactivex/MultichannelIndustryBenchmarks.aspx>.

¹⁸ See SNL KAGAN, Top Cable MSOs, <https://www.snl.com/Interactivex/TopCableMSOs.aspx>.

¹⁹ 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).

²⁰ See 47 CFR § 76.1705.

²¹ See 47 CFR § 76.1700(a)(4).

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 or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standard; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.²²

11. The *NPRM* proposes to eliminate the requirement that cable operators maintain a current channel lineup in the cable operator's local office, and invites comment on this proposal and whether there are reasons why this requirement should be retained. Eliminating this requirement would eliminate the costs of maintaining this information locally and making it available to those asking to view it, including any related managerial, administrative, and operational costs. The Commission considered the alternative of not eliminating this requirement but has tentatively concluded the requirement is unnecessary and outdated and should be eliminated.

12. In addition, the *NPRM* invites comment on whether to eliminate the requirement that cable systems with 1,000 or more subscribers make a current copy of their channel lineup available via their online public inspection file, or whether this requirement should be retained to ensure that consumers have sufficient access to channel lineup information. Alternatively, the *NPRM* asks whether cable operators subject to Section 76.1700(a)(4) should instead be required to put channel lineup information on their own website and, if so, whether we should require these operators to "maintain a current listing of the cable television channels which that systems delivers to its subscribers" on their website as our public file rules currently require.

13. Operators of cable systems with fewer than 1,000 subscribers are exempt from all online public file requirements, including the requirement to make channel lineup information available via the online file, but they must maintain local public inspection files and are subject to the requirement in Section 76.1705 that they maintain a copy of their current channel lineup locally. The *NPRM* asks whether, if we eliminate Section 76.1705, there will continue to be adequate access to channel lineup information for systems with fewer than 1,000 subscribers, or whether we should instead continue to require these small operators to maintain current channel lineup information in their local public inspection files if they do not voluntarily use the online public file. The *NPRM* also asks if we should instead require small cable operators to put channel lineup information on their own website and, if so, we should require these operators to "maintain a current listing of the cable television channels which that systems delivers to its subscribers" on their website.

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

14. None.

²² 5 U.S.C. § 603(c).

**STATEMENT OF
CHAIRMAN AJIT PAI**

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

In an era of widespread Internet access, artificial intelligence, driverless cars, and too many technological marvels to mention, it is bizarre that the FCC still requires every cable operator to maintain at its local office a current listing of its cable television channels. The FCC’s channel-lineup rules *might* have made sense back when they were adopted in 1972. I say “might” because the Commission didn’t actually explain back then why it thought that these regulations were necessary. As the *Notice* surmises, perhaps the intent was to help the agency verify compliance with certain technical performance standards that no longer exist. Or perhaps it thought that viewers might well visit a cable operator’s local office to track down Meathead from *All in the Family* (one of the most-watched television programs in America at the time).¹

But as with other initiatives in our *Modernization of Media Regulation Initiative*, this matter is now simple. Consumers can and do easily access channel lineups in ways not contemplated when the rules were adopted. Cable operators’ websites, on-screen electronic program guides, paper guides, the Commission-hosted online public inspection file, and plain old Internet searches supply the information consumers want without them even having to get up from the couch. And the Commission itself has even more ways of obtaining this information. Given these choices, Archie Bunker might very well deem a meathead anyone who actually visited a cable operator’s local office to view channel lineup information. That, among other reasons, explains why we’re proposing to eliminate this rule.

I’d like to thank the dedicated staff who worked on this *Notice*, including Steve Broeckaert, Michelle Carey, Martha Heller, Kim Matthews, and Holly Saurer from the Media Bureau, and Susan Aaron and Dave Konczal from the Office of General Counsel.

¹ TV Ratings: 1972-1973, available at <http://www.classictvhits.com/tvratings/1972.htm>.

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

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

I have stated more than once how skeptical I am of many of the majority's current attempts to "modernize media regulation," by systematically rolling back rules and requirements impacting broadcasters. And while I still worry that the cumulative effects leave consumers worse off, as I have also said, so long as the public interest is served, I will support the examination of certain rules to determine whether they remain useful or necessary.

Today's item proposes to remove a requirement that cable systems retain a copy of their channel lineup in their local offices. If this rule change is adopted, cable providers will still be required to maintain channel lineup information that can be shared with subscribers "at the time of installation, at least annually, and at any time upon request." I do not object to seeking comment and, if the record shows that the current requirement is redundant or unnecessary, then we should act accordingly.

I am wary, however, about questions on whether cable channel lineup information should also be removed from the online public inspection files of these cable systems. Migrating public files of broadcasters and cable systems online stands out to me as a success story—demonstrating the Commission's ability to leverage the internet and technology to improve transparency. In fact, this item justifies removing channel lineups from local offices, in part, by pointing out that consumers can access this information using the online public inspection files hosted on the Commission's website. Consumers should have access to more information, not less, and collecting information about entities we regulate then sharing it with the public is a core function of the agency. I would have concerns with efforts to diminish the value of our online public inspection file database for consumers, and will review the record on this point with interest.

That said, I vote to approve this NPRM, which allows the Commission to seek comment on the proposals and questions that it presents. I thank the Media Bureau for its work on this item.

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

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 tentatively conclude to eliminate the requirement that cable operators maintain at their local office a current listing of the cable television channels that each cable system delivers to its subscribers. We find this requirement to be “outdated, unnecessary, and inconsistent” with efforts to put this material online. Because this information is available elsewhere and I find it highly unlikely that consumers are trekking to their cable operator’s local office to view this information, I support this conclusion.

We also seek comment on whether we should reconsider the requirement to make this information available through the online public file. Again, as this information is available elsewhere, this seems like another important reform. The item asks if Commission regulation in this area is unnecessary because cable operators have the economic incentive to ensure that both current and prospective customers are able to find out which channels are available. The answer to this is a resounding yes! In fact, NCTA points out that DBS providers are not subject to this mandate and there is no evidence that consumers find this information in the public file useful.

Finally, the item contemplates the impact of our rule changes on small cable operators that are not subject to our public file requirements. I would not support maintaining Section 76.1705 requirements on small cable operators that do not voluntarily maintain a public file. We are talking about systems with fewer than 1,000 subscribers. As the Commission has recognized in other circumstances, smaller entities need more of a reprieve from our rules, not less. Again, these are “outdated, unnecessary, and inconsistent” regulations that do not apply to cable competitors and ignore market incentives to make this information available.

I approve.