

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

In the Matter of
Amendment of Commission Rule Requiring
Records of Cable Operator Interests in Video
Programming
Modernization of Media Regulation Initiative
MB Docket No. 20-35
MB Docket No. 17-105

REPORT AND ORDER

Adopted: September 29, 2020

Released: September 30, 2020

By the Commission: Commissioners Rosenworcel and Starks concurring and issuing separate statements.

I. INTRODUCTION

1. In this Report and Order (Order), we eliminate section 76.1710 of our rules, which requires cable operators to maintain records in their online public inspection files regarding the nature and extent of their attributable interests in video programming services. The current rule also requires that the online public inspection files maintained by cable operators contain information regarding the operators' carriage of such vertically integrated video programming services on cable systems in which they have an attributable interest. Based upon comments received in response to the NPRM, we find that the recordkeeping obligations set forth in section 76.1710 are outdated and unnecessary. Therefore, we eliminate this regulation and revise our rules to omit existing cross-references. By adopting our proposal to repeal this rule, we remove a regulatory burden on cable operators that no longer serves the public interest. Additionally, through this Order, we continue our efforts to modernize the Commission's media regulations.

II. BACKGROUND

2. Section 76.1710 contains recordkeeping obligations with respect to two categories of information. It requires cable operators to maintain in their public inspection files, for a period of three years, records regarding the nature and extent of their attributable interests in all video programming services (the attributable interests requirement) as well as information regarding their carriage of such vertically integrated video programming services on cable systems in which they also have an attributable interest (the carriage requirement). As described in the NPRM, these recordkeeping requirements were

1 See 47 CFR § 76.1710 ("Cable operators are required to maintain records in their public file for a period of three years regarding the nature and extent of their attributable interests in all video programming services as well as information regarding their carriage of such vertically integrated video programming services on cable systems in which they have an attributable interest. These records must be made available to local franchise authorities, the Commission, or members of the public on reasonable notice and during regular business hours.")

2 47 CFR § 76.1710. We refer herein to both parts of this rule collectively as the "cable operator interests in video programming recordkeeping" requirement.

3 Amendment of Commission Rule Requiring Records of Cable Operator Interests in Video Programming, MB Docket Nos. 17-105 and 20-35, Notice of Proposed Rulemaking, 35 FCC Rcd 2220 (2020) (NPRM).

4 See 47 CFR § 76.504 (containing a cross-reference to 47 CFR 76.1710 in Note 2); 47 CFR § 76.1700(a)(7) (describing the records required by section 76.1710 as part of the public inspection file).

5 47 CFR 76.1710.

adopted in 1993 to aid in the enforcement of the Commission's channel occupancy limits,⁶ which were reversed and remanded to the Commission by the U.S. Court of Appeals for the D.C. Circuit in 2001.⁷ However, despite that court decision, the cable operator interests in video programming recordkeeping requirement has remained part of the public file requirements for cable operators.⁸

3. The Commission transitioned the public file requirements for cable operators to an online format in 2016, when the Commission expanded the list of entities required to post public inspection files to the Commission's online database.⁹ Since then, the cable operator interests in video programming recordkeeping requirement has been part of the online public inspection file to be maintained by cable system operators.¹⁰

4. Comments in the Commission's Media Modernization proceeding identified cable operator interests in video programming as one of several categories of information that parties felt were superfluous and could be eliminated from the online public inspection file.¹¹ In February 2020, the Commission adopted the *NPRM* to seek comment on whether to modify or eliminate section 76.1710 and references to the rule in other associated rule provisions.¹² As the channel occupancy limits were reversed

⁶ *NPRM*, 35 FCC Rcd at 2221, para. 2. The Commission adopted the channel occupancy limits consistent with section 11 of the Cable Television Consumer Protection and Competition Act of 1992, which required the Commission to establish reasonable limits on the number of cable channels that can be occupied by a video programmer in which a cable operator has an attributable interest. *See generally Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992, Horizontal and Vertical Ownership Limits*, MB Docket No. 92-264, Second Report and Order, 8 FCC Rcd 8565 (1993).

⁷ *See Time Warner v. FCC*, 240 F.3d 1126, 1139 (D.C. Cir. 2001). The court found that the Commission failed to justify its channel occupancy limits as not burdening substantially more speech than necessary. *Id.* While the Commission did seek comment on reinstating the channel occupancy limits, it found the record inadequate to support adopting a specific vertical limit on the ownership of video programming sources by owners of cable systems. *See generally Commission's Cable Horizontal and Vertical Ownership Limits*, MM Docket Nos. 92-264, 94-150, 92-51, and 87-154, CS Docket Nos. 98-82 and 96-85, Fourth Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 2134, 2192, para. 135 (2008) (noting that the record contained no proposals for a specific limit, no evidence to support a specific limit, no methodology to help determine a specific limit, and no demonstration of any a link between the harms of vertical integration and a specific limit designed to prevent these harms); *Commission's Cable Horizontal and Vertical Ownership Limits*, MM Docket No. 92-264, Second Further Notice of Proposed Rulemaking, 20 FCC Rcd 9374, 9381-82, para. 9 (2005) (finding no sound evidentiary basis for setting vertical limits as required by the D.C. Circuit); *Implementation of Section 11 of the Cable Television Consumer Protection and Competition Act of 1992*, Further Notice of Proposed Rulemaking, MM Docket Nos. 92-264, 94-150, 92-51, and 87-154, CS Docket Nos. 98-82 and 96-85, 16 FCC Rcd 17312, 17350-52 paras. 81-84 (2001) (seeking comment on vertical limit proposals after reversal by the D.C. Circuit).

⁸ The Commission reorganized its public file rules in 1999 to reduce the regulatory burden faced by cable operators with regard to recordkeeping requirements. *1998 Biennial Regulatory Review—Streamlining of Cable Television Services Part 76 Public File and Notice Requirements*, CS Docket No. 98-132, Report and Order, 14 FCC Rcd 4653, 4653, para. 1 (1999). As part of the reorganization proceeding, the Commission sought comment on whether to remove or consolidate any public file requirements. *1998 Biennial Regulatory Review—Streamlining of Cable Television Services Part 76 Public File and Notice Requirements*, CS Docket No. 98-132, Notice of Proposed Rulemaking, 13 FCC Rcd 15219, 15220, para. 4 (1998) (noting that certain information cable operators are required to maintain "may be difficult to collect and inefficient to maintain, especially when that information is infrequently used or readily available through another source").

⁹ *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, MB Docket No. 14-127, Report and Order, 31 FCC Rcd 526, 528, para. 4, Appx. B (2016).

¹⁰ 47 CFR § 76.1700(a)(7).

¹¹ *NPRM*, 35 FCC Rcd at 2222-23, para. 5..

¹² *Id.* at 2220, para. 1 & n.3.

and remanded by the D.C. Circuit over 18 years ago, the *NPRM* sought comment on what purpose, if any, the rule serves today that would justify its retention.¹³ The *NPRM* noted that, in the over 26 years since the requirement was adopted, the Commission was aware of only a single instance in which the rule has been invoked.¹⁴

5. As discussed below, all but one commenter to the *NPRM* agree that section 76.1710 should be eliminated in its entirety.¹⁵ The only point of contention in the record is whether the attributable interests requirement (i.e., the requirement to disclose attributable interests in video programming) should be retained due to the potential usefulness of the information in the context of program access complaints. Notably, no commenter asserts that section 76.1710 remains useful for its original purpose, which was to aid in the enforcement of the channel occupancy limits.

III. DISCUSSION

6. For the reasons discussed below, we repeal section 76.1710 and all cross-references to it. Consistent with our observations in the *NPRM*, the record indicates that the rule is of very limited utility and there is little justification for its retention after the D.C. Circuit reversed and remanded the channel occupancy limits. Accordingly, we eliminate both the portion of the rule requiring cable operators to maintain in their public inspection files, for a period of three years, records regarding the nature and extent of their attributable interests in all video programming services (the attributable interests requirement) as well as the portion of the rule requiring maintenance of records regarding their carriage of such vertically integrated video programming services on cable systems in which they also have an attributable interest (the carriage requirement). No commenter supports retention of the latter, i.e., the carriage requirement; indeed, even the lone commenter that put forth an argument to retain the attributable interests requirement agrees that the carriage requirement portion of the rule should be eliminated because such information is widely available elsewhere.¹⁶ Therefore, we find that there is no dispute as to whether cable operators should be required to disclose the carriage information for vertically integrated programming in their online public inspection files. We agree with commenters that this requirement has become outdated and no longer serves the public interest, and accordingly, we hereby eliminate it.

7. The only contested issue in the record involves section 76.1710's attributable interests requirement, i.e., the requirement that cable operators maintain records regarding the nature and extent of their attributable interests in all video programming services. While Verizon and NCTA support eliminating this attributable interest recordkeeping requirement completely,¹⁷ ACA advocates for retaining the attributable interest record in a less burdensome way.¹⁸ ACA asserts that the information is

¹³ *Id.* at 2223, para. 7.

¹⁴ *Id.* at 2223, para. 9.

¹⁵ Three parties filed comments in this proceeding in response to the *NPRM*. Verizon and the National Cable Telecommunications Association (NCTA) support eliminating section 76.1710 in its entirety. ACA Connects—America's Communications Association (ACA) advocates for retaining a portion of section 76.1710.

¹⁶ ACA Comments at 5. ACA cites to the Commission's findings in an earlier Media Modernization proceeding that found consumers were more likely to seek and access channel lineup information from cable company websites, on-screen electronic program guides, and paper guides. *See Channel Lineup Requirements—Sections 76.1705 & 76.1700(a)(4)*, MB Docket No. 18-92, Report and Order, 34 FCC Rcd 2636, 2639-40, para. 8 (2019).

¹⁷ NCTA Comments at 2; Verizon Comments at 2.

¹⁸ ACA Comments at 5 (suggesting that the Commission could “allow cable operators to post ‘classes’ of ownership percentages (5%—25%, 26%—50%; 51%—75%; 76%—100%) so that they would not have to update the filings based on minor ownership changes”).

potentially useful in program access complaint proceedings.¹⁹ ACA claims that requiring cable operators to continue disclosing this information in the public inspection file would be preferable to forcing program access complainants to obtain this information from other, potentially less reliable sources.²⁰ NCTA disagrees, stating that “entities seeking attributable interest information can retrieve it from a variety of readily available sources.”²¹ NCTA also argues that it is unreasonable to require all cable operators to keep compiling this information and uploading it to the public file just because of “the possibility that at some future point it may spare a potential program access complainant the burden of compiling ownership information on its own.”²²

8. We find that the public interest will be best served by eliminating section 76.1710 in its entirety, including the attributable interests portion of the recordkeeping requirement. We note that no party maintains that the information is useful or of interest to the general public. The record indicates that it is only potential program access complainants that might find such information useful.²³ Furthermore, the usefulness of such information in the program access context appears to be theoretical at best, as there is no evidence in the record that this information has ever actually been relied upon in a program access complaint.²⁴ Ultimately, we find that the narrow and specific circumstances under which the attributable interests information could benefit a small subset of industry, together with the availability of other sources for ascertaining such information, weighs against retaining the requirement that this information be included in the public inspection file.

9. We agree with NCTA that there are other publicly available sources from which information for program access issues could be obtained, including Securities and Exchange Commission (SEC) filings and industry-specific resources such as SNL Kagan.²⁵ Although ACA may be correct that, in general, this information is only available for publicly held cable operators, and may not always be accurate if available for smaller or privately held cable operators,²⁶ we disagree that this very narrow utility of the rule justifies its retention. This is particularly true as smaller cable operators are less likely to be subject to a program access complaint given that they are less likely to have attributable interests in programming in general or, more specifically, in the sort of programming that is highly rated and/or considered “must-have” and thus more likely to be the basis for a complaint.²⁷ We also agree with NCTA

¹⁹ ACA Comments at 2, 5. As the Commission’s program access rules prohibit unfair practices by satellite cable programming vendors in which a cable operator has an attributable interest, a prospective complainant against a satellite cable programming vendor must demonstrate that a cable operator has an attributable interest in such a vendor. *Id.* at 2-3. Thus, ACA contends that the attributable interests requirement in section 76.1710 assists prospective program access complainants by providing ready access to information regarding cable operators’ attributable interests, information that complainants would otherwise have to obtain on their own. *Id.* at 3.

²⁰ ACA Comments at 4-5.

²¹ NCTA Reply at 2.

²² *Id.* at 2.

²³ See ACA Comments at 2-3.

²⁴ NCTA Reply at 3.

²⁵ NCTA Reply at 2.

²⁶ ACA Comments at 4; Letter from Michael Nilsson, Counsel, ACA, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 20-35, at 2 & n.9 (filed May 27, 2020) (ACA *Ex Parte*).

²⁷ Commission reports also indicate that the most notable networks affiliated with cable operators tend to be affiliated with larger operators, which own several times more cable networks than smaller operators. See *Communications Marketplace Report*, GN Docket No. 18-231 et al., Report, 33 FCC Rcd 12558, 12603, para. 67 (2018) (stating that Comcast owns the NBC Sports Network, USA, E!, Syfy, MSNBC, CNBC, Bravo, Oxygen, and the Golf Channel along with several regional sports networks); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 16-247, Eighteenth Report, 32 FCC Rcd 568, 578, para. 24 (MB 2017) (noting that, as of 2016, Comcast had ownership interests in a total of 52 national networks

(continued....)

that this information is readily discoverable in the complaint context.²⁸ Based on publicly available sources, potential program access complainants could plead that the programming at issue is vertically integrated with a cable operator, and the cable operator in its answer would have to concede that the assertion is true or provide evidence that it is untrue.²⁹ Finally, as the Commission's program access rules and procedures were not adopted to work in conjunction with the attributable interests recordkeeping requirements, we find that the program access rules would still function as intended in the absence of attributable interests information being available in cable operators' online public inspection files.³⁰

10. We also agree with NCTA that the public interest would not be served by requiring *all* cable operators to keep such information in their public inspection files solely on the chance that *a* cable operator becomes the subject of a program access complaint.³¹ We note that in the past five years, the Commission has received only one program access complaint.³² Therefore, we believe that requiring a cable operator to keep these records on file even though the records are likely never to be used by a program access complainant (or anyone else), runs counter to our goal of eliminating unnecessary regulatory burdens.³³ Although ACA questions whether the recordkeeping requirement imposes any meaningful burden on large cable system operators, it offers no evidence that undermines NCTA's position.³⁴

11. Lastly, we disagree with ACA's proposal to modify the rule. ACA proposes that the rule be modified to allow cable operators to post their attributable interests once and then only post updates if the interests change.³⁵ ACA further suggests cable operators could post "classes" of ownership percentages so that they would not have to update their filings based on minor ownership changes.³⁶ No other commenter supports this or any other modification of the rule. Indeed, we find that the proposed modification is arguably more burdensome than the current rule, as it would still require cable operators to determine, prepare, and post some amount of attributable interest information and would require updates that in some cases would go above and beyond what is required by the current regulation. For example, under ACA's proposal, a cable operator would have to file an update when its ownership in a

(Continued from previous page) _____

(26 cable channels and sports networks in standard definition and their 26 high definition counterparts), while a smaller operator like Cox had ownership interests in six national networks (three in standard definition and three in high definition)).

²⁸ See NCTA Reply at 3 (pointing out that the pre-filing notice requirement for program access complaints serves as another mechanism for determining whether a programming vendor that is the potential target of a complaint is attributable for purposes of the program access rules).

²⁹ See *id.*

³⁰ See generally *Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution and Carriage*, MM Docket No. 92-265, First Report and Order, 8 FCC Rcd 3359 (1993).

³¹ See NCTA Reply at 2.

³² See *WaveDivision Holdings, LLC and Astound Broadband, LLC v. Comcast Sportschannel Pacific Associates et al.*, Order, 33 FCC Rcd 2165 (MB 2018).

³³ As noted above, the Commission has received just one program access complaint in the past five years.

³⁴ ACA *Ex Parte* at 2-3 (asserting that it would be unreasonable to place the burden of obtaining vertical integration information on potential complainants given the minimal burden the recordkeeping requirement places on cable operators); see NCTA Reply at 2 (stating that retaining a burden on cable operators is unwarranted if the sole justification is the possibility that it may spare a potential program access complainant the burden of compiling ownership information).

³⁵ ACA Comments at 5.

³⁶ *Id.*

programmer increased from 70% to 80% even though no such update is required under our current rules. Furthermore, given the very limited utility, if any, of keeping attributable interests information on file, we cannot find a justification in the record for retaining any part of the rule, even in a modified or reduced form.

12. For these reasons, we eliminate section 76.1710 in its entirety. We also eliminate from sections 76.504 and 76.1700 of the Commission's rules the references to the recordkeeping requirement contained in section 76.1710.³⁷

IV. PROCEDURAL MATTERS

13. *Regulatory Flexibility Act.* As required by the Regulatory Flexibility Act of 1980 (RFA), as amended,³⁸ an Initial Regulatory Flexibility Certification was incorporated into the *NPRM*.³⁹ Pursuant to the RFA,⁴⁰ the Commission's Final Regulatory Flexibility Certification relating to this Report and Order is attached as Appendix B.

14. *Paperwork Reduction Act.* This Order does not contain proposed new or revised information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. §§ 3501- 3520). In addition, this Order therefore 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).

15. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is "non-major" under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

V. ORDERING CLAUSES

16. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 1, 4(i), 4(j), 303(r), and 613 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 303(r), and 533, this Report and Order **IS ADOPTED**.

17. **IT IS FURTHER ORDERED** that Part 76 of the Commission's Rules **IS AMENDED** as set forth in Appendix A, and the rule changes to sections 76.504, 76.1700, and 76.1710 adopted herein will become effective as of the date of publication of a summary in the Federal Register.⁴¹

18. **IT IS FURTHER ORDERED** that, should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 20-35 **SHALL BE TERMINATED** and its docket **CLOSED**.

19. **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

³⁷ Note 2 to section 76.504 contains a cross reference to section 76.1710. Section CFR 76.1700 lists operator interests in video programming as a component of the public inspection file and also cross-references section 76.1710.

³⁸ 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.

³⁹ *NPRM*, 35 FCC Rcd at 2229, Appx B.

⁴⁰ See 5 U.S.C. § 604.

⁴¹ These rule modifications serve to "reliev[e] a restriction." 5 U.S.C. § 553(d)(1).

the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

20. **IT IS FURTHER ORDERED** that the Commission **SHALL SEND** a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 part 76 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, 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. Amend § 76.504 by removing Note 2.
3. Amend § 76.1700 by removing and reserving paragraph (a)(7).
4. Remove § 76.1710.

APPENDIX B**Final Regulatory Flexibility Act Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM) in MB Docket 20-35.² The Commission sought public comments on proposals in the NPRM, including comment on the IRFA. The Commission received no comments on the IRFA. The present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA

A. Need for, and Objectives of, the Proposed Rules

2. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),³ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM) in MB Docket 20-35.⁴ The Commission sought public comments on proposals in the NPRM, including comment on the IRFA. The Commission received no comments on the IRFA. The present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

3. This Report and Order (Order) stems from an NPRM released by the Commission in March 2020, seeking comment on whether to eliminate or modify section 76.1710 of the Commission's rules. The parties that filed comments in the proceeding agree that the recordkeeping requirement at issue is no longer necessary for its original purpose. One party commented that the attributable interest regulations should be retained due to the potential usefulness of that information in the context of program access complaints. The Order finds that the information on which program access complaints are based can be obtained from sources other than the public inspection files maintained by cable operators. The Order also finds that the usefulness of such information in program access contexts is largely theoretical because cable operators would have to maintain such information in their public inspection files simply on the chance that the operator might someday become the subject of a program access complaint. Therefore, the Order does not find any compelling reason to retain the rule.

4. By eliminating this rule, the Order reduces the burden of maintaining the public inspection file on cable operators. Specifically, the Order eliminates the requirement that cable operators maintain records in their online public inspection file regarding the nature and extent of their attributable interests⁵ in all video programming services as well as information regarding their carriage of such vertically integrated video programming⁶ services on cable systems in which they have an attributable

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-12, 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.

² *Amendment of Commission Rule Requiring Records of Cable Operator Interests in Video Programming*, Notice of Proposed Rulemaking, 35 FCC Rcd 2220, 2229, Appx. B (2020)

³ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-12, 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.

⁴ *Amendment of Commission Rule Requiring Records of Cable Operator Interests in Video Programming*, Notice of Proposed Rulemaking, 35 FCC Rcd 2220, 2229, Appx. B (2020)

⁵ An attributable interest is an ownership interest in, or relationship to, an entity that gives the interest holder a certain degree of influence or control over the entity as defined in the Commission's rules. *See* 47 CFR § 76.501, Note 2.

⁶ Vertically integrated video programming is video programming carried by a cable system and produced by an entity in which the cable system's operator has an attributable interest.

interest for a period of at least three years. The Order finds that eliminating this recordkeeping requirement will remove an outdated and unnecessary regulatory burden on cable operators.

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

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

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

6. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.⁷ The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

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

7. 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 rule revisions, 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 (SBA).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.

8. *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.¹²

⁷ 5 U.S.C. § 604(a)(3).

⁸ 5 U.S.C. § 603(b)(3).

⁹ 5 U.S.C. § 601(6); *see infra* note 8 (explaining the definition of “small business” under 5 U.S.C. § 601(3)); *see* 5 U.S.C. § 601(4) (defining “small organization” as “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, 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(5) (defining “small governmental jurisdiction” as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the Federal Register”).

¹⁰ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632(a)(1)). 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.” *Id.*

¹¹ 15 U.S.C. § 632(a)(1)-(2)(A).

¹² 47 CFR § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408, para. 28 (1995).

Industry data indicate that, of 4,200 cable operators nationwide, all but 9 are small under this 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 Industry data indicate that, of 4,200 systems nationwide, 3,900 have fewer than 15,000 subscribers, based on the same records.¹⁵ Thus, under this standard, we estimate that most cable systems are small entities.

9. *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 As of 2019, there were approximately 48,646,056 basic cable video subscribers in the United States.¹⁷ Accordingly, an operator serving fewer than 486,460 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.¹⁸ Based on available data, we find that all but five cable operators are small entities under this size standard.¹⁹ 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.²⁰ Therefore, 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.

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

10. The Order eliminates a rule that requires cable operators to maintain records of their attributable interests in video programming in their online public inspection files. Accordingly, the Order does not impose any new reporting, recordkeeping, or other compliance requirements.

F. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

11. 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 or reporting requirements under the rule for small entities; (3) the use of performance, rather

¹³ The number of active, registered cable systems comes from the Commission's Cable Operations and Licensing System (COALS) database on January 2, 2020. See FCC, Cable Operations and Licensing Systems (COALS), www.fcc.gov/coals (last visited Jan. 2, 2020).

¹⁴ 47 CFR § 76.901(c).

¹⁵ See *infra* note 17.

¹⁶ 47 U.S.C. § 543(m)(2); see 47 CFR § 76.901(f) & nn.1–3.

¹⁷ S&P Global Market Intelligence, *U.S. Cable Subscriber Highlights, Basic Subscribers(actual) 2019*, *U.S. Cable MSO Industry Total*, see also *U.S. Multichannel Industry Benchmarks, U.S. Cable Industry Benchmarks, Basic Subscribers 2019Y*, <https://platform.marketintelligence.spglobal.com>.

¹⁸ 47 CFR § 76.901(f) and notes ff. 1, 2, and 3.

¹⁹ S&P Global Market Intelligence, *Top Cable MSOs as of 12/2019*, <https://platform.marketintelligence.spglobal.com>. The five cable operators all had more than 486,460 basic cable subscribers.

²⁰ 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 § 76.909(b).

than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.²¹

12. The Order eliminates the obligation, imposed on cable operators, to maintain records of their attributable interests in video programming in their online public inspection files. Eliminating this requirement is intended to modernize the Commission's regulations and reduce costs and recordkeeping burdens for affected entities, include small entities. Under the revised rules, affected entities no longer will need to expend time and resources maintaining and updating this portion of their online public inspection files.

13. Because no commenter provided information specifically quantifying the costs and administrative burdens of complying with the existing recordkeeping requirements, we cannot precisely estimate the impact on small entities of eliminating them. By eliminating the rule, the Order reduces the costs and burdens of compliance on all cable operators, including small entities.

G. Report to Congress

14. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.²² In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.

²¹ See 5 U.S.C. § 603(c).

²² See 5 U.S.C. § 801(a)(1)(A).

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL,
CONCURRING**

Re: *Amendment of Commission Rule Requiring Records of Cable Operator Interests in Video Programming*, MB Docket No. 20-35; *Modernization of Media Regulation Initiative*, MB Docket No. 17-105.

For decades, the Federal Communications Commission has required that broadcasters, cable operators, and direct broadcast satellite providers keep public inspection files that include a wide range of information about their operations. Today, the agency addresses one small part of those policies. Specifically, it concludes that cable operators no longer need to include in this file information regarding attributable interests in video programming services because, among other reasons, where such interests exist, information is broadly available elsewhere. To this end, it eliminates section 76.1710 of our rules.

But there is something missing in this process. To get to the conclusion we reach today, it bypasses the law and disregards an outstanding court remand. This is not the right way to do things.

To understand why, start with the Cable Television Consumer Protection and Competition Act of 1992. That was the law that directed the FCC to establish limits on the number of channels a cable operator may devote to programming from its affiliated channels. Our first rules were put in place in 1993. They were revised in 1999. But in 2001 a court remanded those limits back to the agency. A series of rulemakings followed, including one in 2008, when the agency last asked how it should refashion these rules. And then nothing—total silence—until March of this year, when we began a rulemaking to eliminate this requirement altogether.

If this seems like a process skipped a few steps, you're right. It did. That's why six months ago I suggested, along with Commissioner Starks, that we should not have begun a rulemaking to eliminate this rule without first addressing the underlying court remand. That's not unreasonable. It's how the law is supposed to work. But I'm afraid cutting corners here is just par for the course right now. It's how the agency is operating. That's unfortunate—because in this case it's not necessary. For this reason, I concur.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS,
CONCURRING**

Re: *Amendment of Commission Rule Requiring Records of Cable Operator Interests in Video Programming*, MB Docket No. 20-35; *Modernization of Media Regulation Initiative*, MB Docket No. 17-105.

I won't repeat all the reasons articulated in my statement to the NPRM why proposing to eliminate this rule without fully addressing its statutory purpose was a bad idea. In the name of modernization—which to be meaningful, must entail more than just getting rid of rules—we again eliminate a rule established to fulfill a statutory obligation while leaving the underlying statute unaddressed and the statutory obligation unmet. The Cable Television Consumer Protection and Competition Act of 1992 requires the Commission to establish limits on the number of channels a cable operator may devote to video programming from affiliated channels. The rule established to implement that requirement has long been repealed, but the statutory obligation still exists and the mere passage of time has not, by itself, rendered that statutory provision meaningless. We should have at least acknowledged as much before just taking the rule off the books with no plan to revisit cable operator channel limits. I therefore (again) concur.

Thank you to the Media Bureau staff for their work on this item.