

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

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

REPORT AND ORDER

Adopted: April 12, 2019

Released: April 12, 2019

By the Commission: Chairman Pai and Commissioners O’Reilly and Rosenworcel issuing separate statements; Commissioner Starks approving in part, dissenting in part and issuing a separate statement.

I. INTRODUCTION

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

II. BACKGROUND AND DISCUSSION

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

2. As part of our Modernization of Media Regulation Initiative, last year we released a *Notice of Proposed Rulemaking* tentatively concluding that the requirement in Section 76.1705 that cable operators maintain a channel lineup locally is outdated and unnecessary and should be eliminated.⁴ In

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

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

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

⁴ See *Channel Lineup Requirements – Sections 76.1705 and 76.1700(a)(4)*, *Modernization of Media Regulation Initiative*, Notice of Proposed Rulemaking, 33 FCC Rcd 4323, para 1 (2018) (*NPRM*). In the *Media Modernization PN*, the Commission sought comment generally on which of its rules should be modified or eliminated. See *Media Modernization PN*, 32 FCC Rcd at 4406. The Commission received a number of comments suggesting that the Commission should eliminate, or at least review, the requirement that cable providers maintain a channel lineup locally and the requirement that channel lineup information be maintained in the online public file. See Comments, (continued....)

response, nearly all commenters agree that it is no longer necessary for cable operators to maintain channel lineup information at their local offices.⁵ Specifically, NCTA, ACA, and ITTA maintain that channel lineups are now available in numerous places, making the requirement to maintain a lineup locally unnecessary.⁶ Commenters also generally agree with our observation in the *NPRM* that few, if any, consumers interested in channel lineup information are likely to access this information by visiting an operator's local office as other sources of channel lineup information can be viewed far more quickly and easily.⁷

3. We adopt our tentative conclusion and eliminate Section 76.1705. As discussed in the *NPRM*, this requirement was originally adopted nearly 50 years ago as part of the Commission's technical standard performance rules for cable.⁸ 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."⁹ While the Commission did not explain in its order exactly why it believed it was necessary for a system to maintain at its local office a list of the channels it delivers, it appears that the requirement was intended to help the Commission verify compliance with technical performance standards that applied to certain cable channels at that time.¹⁰

4. Regardless of the original purpose of the requirement to maintain a channel lineup locally, we conclude that the requirement is no longer necessary as information about the channel lineups of individual cable operators is available today through other sources including, in many cases, the operator's own website,¹¹ on-screen electronic program guides, and paper guides.¹² These sources are more readily and easily accessible to consumers and others than the operator's local office. In addition, as we noted in the *NPRM*, Section 76.1602(b) of the Commission's rules separately requires cable operators to provide information to subscribers regarding the "channel positions of programming carried on the system" and "products and services offered" at the time of installation, at least annually, and at any time upon request.¹³ Thus, channel lineup information is actively sent to cable subscribers at least once a

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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.

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

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

⁷ See *NPRM*, 33 FCC Rcd at 4324, para. 3. See also NCTA Comments at 2, ITTA Comments at 2, and NATOA (continued....)

year and is required to be made available upon request at any time.¹⁴ Moreover, as several commenters point out, cable operators have strong economic incentives to ensure that channel lineup information reaches both existing and prospective customers so that they can better compete in the video marketplace.¹⁵ Commenters note that customers have a choice of MVPDs and not making this information easily available would almost certainly result in the loss of potential and existing customers.¹⁶

5. Thus, we conclude that because channel lineup information is available from many sources today and operators have an incentive to ensure that this information is widely disseminated, the burden imposed by Section 76.1705 is unnecessary, and it is appropriate to eliminate this regulation. In reaching this conclusion, we disagree with CCTV that cable operators should continue to be required to provide channel lineups at local offices because PEG channels and program details may not be included in cable operators' electronic program guides.¹⁷ First, we note that our rules do not require cable operators to provide "program details" in their channel lineups, so our action today will have no impact on the dissemination of program details by operators.¹⁸ Moreover, there is no evidence in the record that the channel lineup information in an operator's local office would be different from that in an electronic program guide or that members of the public visit operators' local offices to obtain channel lineups in order to see which channels are PEG channels. Thus, retaining Section 76.1705 would not assure that information regarding PEG channels would be made available in a manner that would satisfy CCTV or produce any meaningful benefit.

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

6. We also eliminate the requirement in Section 76.1700(a)(4) of our rules that cable operators make channel lineup information available for public inspection through the online public file hosted by the Commission.¹⁹ Similar to our determination with respect to Section 76.1705, we conclude

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Comments at 2.

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

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

¹⁰ See *NPRM*, 33 FCC Rcd at 4324, para. 2, note 8.

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

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

¹³ See *NPRM*, 33 FCC Rcd at 4326, para. 7. See also 47 CFR § 76.1602(b)(1), (5). The provision states: "Effective July 1, 1993, the cable operator shall provide written information on each of the following areas at the time of
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that the requirement in Section 76.1700(a)(4) is unnecessary in light of the widespread availability of channel lineup information from other sources that are more likely to be accessed by customers and others seeking this information.²⁰

7. As discussed in the *NPRM*, in 2016, the Commission expanded the list of entities required to maintain an online public file to include, among others, operators of cable systems with at least 1000 subscribers.²¹ In the *Expanded Online Public File Order*, the Commission required cable operators subject to the online file requirement to comply with Section 76.1700(a)(4) either by uploading to the online public file information regarding their current channel lineup, and keeping the information up-to-date, or by providing a link in the online file to the channel lineup maintained by the operator at another online location.²² In the *NPRM* in this proceeding, we invited comment on whether we should eliminate the requirement that cable operators make channel lineup information available via the online public file on the ground that consumers have multiple other sources of information about a cable system's current channel lineup.²³ Commenters in favor of eliminating the rule argue generally that channel lineup information is available today from multiple other sources, making the rule unnecessary. Those opposed to eliminating the rule argue generally that it helps ensure that broadcasters and regulators as well as consumers have access to accurate and up-to-date channel lineup information.²⁴

8. We agree with NCTA, ACA, and ITTA that, because it is now easy to access channel lineup information from company websites, on-screen electronic program guides, and paper guides, it is unnecessary to require cable operators to also make channel lineup information available via the online public file.²⁵ We agree with these commenters that consumers seeking channel lineup information are more likely to look first to these alternate sources of information rather than the Commission's online public file database.²⁶ It is most likely that current subscribers would first access their cable operator's electronic program guide or website to obtain channel lineup information. Prospective customers also are more likely to look first to a cable provider's website to determine what channels it delivers.²⁷ In

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installation of service, at least annually to all subscribers, and at any time upon request: ... (1) Products and services offered; ... (5) Channel positions of programming carried on the system..." The Commission recently affirmed that written information that cable operators must provide to their subscribers pursuant to Section 76.1602(b) may be provided electronically via email distribution. *Electronic Delivery of MVPD Communications*, MB Docket Nos. 17-105, 17-317, Report and Order and Further Notice of Proposed Rulemaking, FCC 18-166, 2018 WL 6061286, at *4, para. 11 (Nov. 16, 2018).

¹⁴ *Id.*

¹⁵ See NCTA Comments at 2; ACA Comments at 2; ITTA Reply Comments at 4, ACA Reply Comments at 2. *But see* ACM Comments at 3 (arguing that cable operators may not have an economic incentive to provide complete information regarding PEG channels). See also *infra* note 40.

¹⁶ See ACA Comments at 2 and ITTA Reply Comments at 2-3.

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

¹⁸ See NCTA Reply Comments at 3 (noting that the Commission's rules contain no requirement that cable operators describe the programs of any of the channels carried).

¹⁹ See *supra* note 2.

²⁰ Once the rule changes adopted in this proceeding are effective, the Commission staff will revise the online public file database to remove the "Channels Delivered" folder that is currently in every cable public file.

addition, as noted above, operators are also required to make channel lineup information available upon request.²⁸ Moreover, we note that DBS providers are not currently required to post channel lineup information in their online files.²⁹ Thus, eliminating Section 76.1700(a)(4) will establish regulatory parity between cable operators and DBS providers with respect to channel lineup information. We note that no commenter argues that it is difficult to access channel lineup information for DBS providers³⁰ or for cable systems with fewer than 1,000 subscribers which are not required to maintain an online public file.³¹ Although we note that some commenters, including local regulators,³² broadcasters,³³ and an organization representing PEG channels³⁴ urge us to retain this online public file requirement, we find that channel lineup information can just as easily be accessed through other online means such as the cable operator's or a third-party website.³⁵

9. We disagree with NAB that other sources of channel lineup information are not an adequate substitute for the requirement that channel lineups be placed in the online public file.³⁶ As discussed above, we believe that channel lineup information is easily accessible to the public, broadcasters, and regulators via the cable operator's own website or a third-party site. We also disagree with those commenters who argue that alternate sources of channel lineup information are less likely to be up-to-date than the information in the online public file.³⁷ In fact, many cable operators currently elect to include a link in the online file to the channel lineup they maintain online elsewhere.³⁸ Thus, for these operators the information available via the operator's website or another website is the same as that in the online file. We also believe that all cable operators have a marketplace incentive to ensure that the channel lineup information they disseminate to the public is accurate, making a regulatory mandate unnecessary.³⁹

10. Two commenters claim that channel lineups maintained online by cable operators do not provide accurate and complete listings with respect to PEG channels.⁴⁰ Commenters further argue that cable operators commonly do not include information about PEG channels in electronic program guides.⁴¹

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²¹ See *NPRM*, 33 FCC Rcd at 4325, para. 5. See also *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Report and Order, 31 FCC Rcd 526 (2016) (*Expanded Online Public File Order*). In the *Expanded Online Public File Order*, the Commission specifically exempted cable systems with fewer than 1000 subscribers from all online public file requirements. *Id.* at 546, para. 50. The Commission had previously established the online public file database for use by television broadcasters. See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535 (2012).

²² See *Expanded Online Public File Order*, 31 FCC Rcd at 549, para 60.

²³ See *NPRM*, 33 FCC Rcd at 4325-26, para. 5-6. As noted above, some commenters responding to the *Media Modernization PN* urged us to consider eliminating this requirement. See *supra* note 4.

²⁴ Three commenters request not only that we retain the requirement in Section 76.1700(a)(4), but also require cable operators to maintain in their online public file a history of their channel lineups. See Comments of NATOA at 3 (urging the Commission to clarify that cable operators must retain in the online file "histories of their channel lineups over a reasonable period of time."). See also ACM Comments at 3; Boston Reply Comments at 3-4. These commenters argue that such historical information would help the Commission and local franchising authorities review compliance with requirements that cable operators provide advance notice to subscribers of changes in their channel lineup. *Id.* See also 47 CFR § 76.1603 (requiring cable operators to notify customers in advance of changes "in rates, programming services or channel positions"). This issue, which would expand existing online public file obligations with respect to channel lineup information, was not addressed in the *NPRM* and is beyond the scope of this proceeding. In any event, we note that if the Commission has reason to believe that a cable operator is not in compliance with our rules, it may require the operator to provide any relevant information, including historical channel lineup information, to Commission staff. See 47 U.S.C. § 403.

However, we have reviewed the weblinks provided by ACM and, like ACA, we did not detect any omissions of PEG channel listings.⁴² Moreover, we note there is no evidence in the record that the channel lineups maintained in operators' online public files differ from those on the operators' own websites, third-party websites, or in electronic program guides. With regard to the claim that PEG program information is lacking in the operators' websites or electronic program guides, as stated above, our rules do not require program information be included alongside the channel listings with regard to *any* channels.⁴³ We agree with ACA that cable operators have an economic incentive to provide complete and accurate channel listings, including PEG channels.⁴⁴ Cable operators incur costs related to carrying every channel and would have no incentive to fail to provide complete information regarding the channels they deliver.

III. PROCEDURAL MATTERS

11. *Final Regulatory Flexibility Analysis.* – As required by the Regulatory Flexibility Act of 1980, as amended (RFA),⁴⁵ the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Order. The FRFA is set forth in Appendix B.

12. *Paperwork Reduction Act Analysis.* – This document eliminates, and thus does not contain new or revised, information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, 44 U.S.C. § 3501-3520. In addition, therefore, it does not contain any

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²⁵ See NCTA Comments at 3; ACA Comments at 3; ITTA Reply Comments at 3-4.

²⁶ See NCTA Comments at 3; ACA Comments at 3; ITTA Reply Comments at 4.

²⁷ NAB argues that electronic program guides do not allow consumers to compare different operators and do not serve as a source of information for broadcasters or regulators. See NAB Comments at 3. While we recognize that these guides are not available to those who do not currently subscribe to the operator's service, lineups maintained on the operator's website or a third-party site are available to all.

²⁸ See *supra* para. 4 and note 12.

²⁹ See *NPRM*, 33 FCC Rcd at 4326, para. 7.

³⁰ See *id.* (seeking comment on whether channel lineup information of DBS providers is easily accessible).

³¹ See *supra* para. 7 and note 21.

³² See NATOA Comments at 2 (“[W]e urge the Commission to retain the online public file requirement to promote access and transparency.”) See also City of Boston, Massachusetts Office of Broadband and Cable (Boston) Reply Comments at 4-5 (urging the Commission to require cable operators to maintain complete channel lineups in their online public files as well as historical lineup information).

³³ See NAB Comments at 1-4. NAB notes that broadcasters frequently rely on channel lineup information to determine whether their stations are in fact being carried pursuant to their mandatory carriage election or retransmission consent agreement, or are perhaps being carried without the broadcaster's permission. Broadcasters also refer to channel lineups to determine whether a station is being carried on the channel position specified in a retransmission consent agreement or requested in a must carry election letter. *Id.* at 2-3.

³⁴ See ACM Comments at 1 (“Consumers, local and state franchising authorities, the Commission and our members have an interest in making sure that accurate records of cable channel lineups are maintained in online public files.”)

³⁵ We decline to impose new public file requirements on cable systems with fewer than 1,000 subscribers. As noted above, such systems are exempt from online public file requirements (see *supra* para. 7 and note 21), but they must maintain local public inspection files. See *NPRM*, 33 FCC Rcd at 4326-27, para. 9 and note 23. In addition, these smaller cable operators are currently subject to the requirement in Section 76.1705, being eliminated in this Order, that they maintain a copy of their current channel lineup locally. *Id.* In the *NPRM*, we asked whether, if we eliminate Section 76.1705, there will continue to be adequate access to information about the channels delivered by smaller cable systems and whether we should require them to continue to make channel lineup information available locally or make it available online. *Id.* at para. 9. No commenter that addressed this issue with respect to small

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new or modified “information burden for small business concerns with fewer than 25 employees” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, 44 U.S.C. § 3506(c)(4).

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

IV. ORDERING CLAUSES

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

15. **IT IS FURTHER ORDERED** that the Commission’s rules **ARE HEREBY AMENDED** as set forth in Appendix A, effective as of the date of publication of a summary in the Federal Register.⁴⁶

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cable systems expressed concern that these systems would not make channel lineup information available if Section 76.1705 were eliminated or advocated in favor of maintaining the requirement in Section 76.1705 for such systems or requiring them to make channel lineup information available online. Consistent with our conclusions regarding larger cable systems, we believe that operators of smaller systems also routinely make their channel lineups available through other sources and have an economic incentive to ensure that information about their channel lineups is widely disseminated. *See supra* para. 4. Moreover, given the ongoing relationship between the cable operator and the LFA, we believe that LFAs will not experience any difficulty in obtaining channel lineup information upon request should they not be able to otherwise locate it online. Accordingly, we conclude that no new regulatory mandates with respect to channel lineup information are necessary to ensure that adequate information is available regarding the channels delivered by these smaller cable systems.

³⁶ See NAB Comments at 3 (“No other source of channel lineup information: (1) is easily accessible to the public, broadcasters, and regulators; (2) is required to be available, accurate, and up-to-date; and (3) ensures that the cable operator responsible for the lineup can be held accountable for the information provided.”).

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

17. **IT IS FURTHER ORDERED** that the Commission will send a copy of the Report and Order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA).

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

FEDERAL COMMUNICATIONS COMMISSION

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³⁷ *Id.* See also ACM Comments at 2.

³⁸ See ACA Reply Comments at 3.

³⁹ *Id.* See also *supra* para. 4. We note that, in the case of a carriage election dispute, whether or not the broadcaster was able to access accurate information about the channels being carried by the cable operator is a factor that could affect our analysis of such a proceeding.

⁴⁰ See ACM Comments at 2 (“...it is incorrect to assume that [cable operator websites] provide accurate or complete local listings, particularly as it related to PEG channels or that operators always have an economic incentive to provide accurate information to consumers.”). See also Boston Reply Comments at 4 (“cable operators commonly exclude relevant programming information, particularly that pertaining to public, educational, and governmental...channels and programming, from their online promotional materials.”). To test the accuracy of channel listings for PEG channels on cable operator websites, ACM compared the websites of three cable providers in Montgomery County, Maryland: Comcast, Verizon, and RCN. According to ACM, only RCN's website provided an accurate listing of available PEG channels. *Id.* at 2-3. In its Reply Comments, ACA argues that, using the website links provided by ACM, it was “very easily” able to find the channel locations of eight PEG channel on Comcast and nine on Verizon. ACA Reply Comments at 4.

⁴¹ See Boston Reply Comments at 4; CCTV Comments at 1-2. ACM questions whether cable operators have an economic incentive to carry PEG channels “from which they derive no direct revenue.” ACM Comments at 3. ACA replies that, while cable operators “derive some revenue” from inserting ads into cable programming streams (which they cannot do with PEG channels), the vast majority of their revenue comes from subscriber fees. ACA Reply Comments at 5, note 13. Accordingly, ACA argues there are very strong incentives for providing accurate and complete information about all channel offerings to existing and potential customers. *Id.*

⁴² See *supra* note 40.

⁴³ See *supra* para. 5 and note 18. NCTA also argues that matters relating to PEG program listings and inclusion in electronic program guides are beyond the scope of this proceeding and “raise numerous legal and technical concerns not fully developed in the record.” See Letter from Rick Chessen, Chief Legal Officer and Senior Vice President, Legal & Regulatory Affairs, NCTA to Marlene H. Dortch, Secretary, FCC, dated April 8, 2019, at 1.

⁴⁴ See ACA Reply Comments at 4 (given that the economic incentives weigh in favor of making information available, ACA urges the Commission not to give too much weight to ACM's anecdotal evidence.).

⁴⁵ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

⁴⁶ These rules serve to “reliev[e] a restriction.” 5 U.S.C. § 553(d)(1).

Marlene H. Dortch
Secretary

APPENDIX A**Final Rules**

Part 76 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

PART 76 – MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The Authority citation for Part 76 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.1700(a)(4) is removed and reserved.
3. Section 76.1705 is removed and reserved.

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking in this proceeding.² The Federal Communications Commission (Commission) sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. We received no comments specifically directed toward the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

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

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

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

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

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

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁷ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁸ In addition, the term "small business" has the

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). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (CWAAA).

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

³ See 5 U.S.C. § 604.

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

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

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

⁷ 5 U.S.C. § 603(b)(3).

⁸ *Id.* § 601(6).

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

5. *Cable Companies and Systems (Rate Regulation Standard).* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers nationwide.¹¹ Industry data indicate that all but nine of the 4,600 cable operators active nationwide are small under the 400,000 subscriber size standard.¹² In addition, under the Commission’s rate regulation rules, a “small system” is a cable system serving 15,000 or fewer subscribers.¹³ Of the 4,600 active cable systems nationwide,¹⁴ we estimate that approximately 3,900 percent have 15,000 or fewer subscribers, and 700 have more than 15,000 subscribers. Thus, under this standard as well, we estimate that most cable systems are small entities.

6. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”¹⁵ There are approximately 52,403,705 cable video subscribers in the United States today.¹⁶ 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.¹⁷ 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.¹⁸ 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.

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

¹⁰ 15 U.S.C. § 632.

¹¹ 47 CFR § 76.901(e).

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

¹³ 47 CFR § 76.901(c).

¹⁴ See FCC, Cable Operations and Licensing System (COALS), www.fcc.gov/coals.

¹⁵ 47 CFR § 76.901(f) & nn. 1-3.

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

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

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

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

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

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

8. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.”¹⁹

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

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

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

11. None.

¹⁹ 5 U.S.C. § 603(c)(1)-(c)(4).

**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.

Visitors to the FCC’s headquarters may notice several new apartment buildings just around the corner. And although our booming neighborhood boasts some great coffee shops and eateries, it doesn’t have a local cable office. In fact, our new neighbors would have to walk over a mile to find the closest local cable office, and the second-closest office is over five miles away.

Given that the FCC requires cable operators to keep an in-office list of the television channels each cable system delivers to its subscribers, one might worry that our local lacuna might make it hard for residents to find out what cable channels are offered here. But fortunately, it’s 2019, not 1972. And our new neighbors have plenty of easy ways to find their cable channel lineups from the comfort of a couch: for example, their cable provider’s websites, on-screen electronic program guides, or just a basic Internet search. Easy access is no accident; video providers in this competitive marketplace have every incentive to let consumers know what channels they offer.

So it is that we adopt today our twelfth order eliminating or updating obsolete rules and procedures through the Commission’s *Modernization of Media Regulation Initiative*. Specifically, we eliminate Section 76.105, which contains the requirement that cable operators maintain current channel listings at their local office. We also erase Section 76.1700(a)(4), which requires cable operators with 1,000 or more subscribers to make channel lineups available through the Commission’s online public inspection file. By applying the other end of the pencil yet again, we continue to update our media regulations to match the realities of today’s marketplace.

It is our own lineup of stellar staff that enabled us to reach this result. For their efforts, I thank Michelle Carey, Martha Heller, Kim Matthews, and Holly Saurer from the Media Bureau, and David Konczal from the Office of General Counsel.

**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 add another set of reforms to our ongoing media modernization effort. On its face, the item may seem modest, but eliminating what we refer to as “unnecessary requirements” in the order, wherever they are found, is essential if we’re going to successfully spur “competition and innovation” in the changing media marketplace, a goal also expressed in the Order. I would also like to thank my fellow commissioners for accepting my requested edit to the item to ensure that no additional regulatory powers could be implied or inferred from the item. Concerns were raised that the original draft under consideration may have unintentionally expanded the regulatory power of local franchise authorities, and I do not believe that was the intention, so I appreciate the removal of that language.

Regarding the first issue under consideration, the requirement that cable operators maintain a current listing of cable television channels at their offices, the record strongly supports my own view that that consumers are highly unlikely to trek to their local cable provider’s office to obtain the channel list. The Commission is right to eliminate what has been referred to in the Order as an “outdated, unnecessary, and inconsistent” requirement, and we also note here the significant effort made by providers to make this material available online. Other Commission rules require this information to be shared annually with subscribers and to be made available upon request at any time. There is simply no reason to continue requiring adherence to a rule whose usefulness has expired.

On the question of whether the requirement to make this information available through the online public file is unnecessary, I would also answer in the affirmative. Some commenters argue that the information is already collected by providers under other Commission rules and, therefore, the cost of uploading it to the public file does not outweigh the benefit for parties who find the public file information useful. While I certainly appreciate any concern for a proper cost-benefit analysis, my own evaluation has led me to conclude that the benefit of eliminating the public file requirement outweighs any cost. Absent economic evidence otherwise, I’m going to lean in the direction of less regulation and eliminating link requirements that no one will likely ever use. The fact that cable operators can comply with the existing rule by simply including a link in their public file demonstrates the ease with which this information can be found online by consumers or other entities.

Finally, I also applaud the rejection of any attempts to add further regulatory burdens to small providers of 1,000 or fewer subscribers. The Commission has recognized in other circumstances that smaller entities need more relief from our rules, not less. The rules dispensed with today are outdated and need to be eliminated, but the broader message here is that the Commission is committed to modernizing media regulations to keep up with a changing world. In the modern video marketplace, virtual MVPDs are trying to eat the lunch of cable operators and other MVPDs. Fierce competition between providers is a boon for consumers, and the Commission is rightly focused on reducing any unnecessary regulations to help spur even greater innovation and competition.

I approve.

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL**

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.

What channel is my show on?” This is a question that has been heard countless times in my house and probably in your house, too. To find the answer to this question, let’s be honest, consumers do not head to their cable operator’s local office. Nor do they search their provider’s online public inspection file at the Federal Communications Commission to peruse the channel lineup. That’s because today consumers can get this information a whole lot faster and a whole lot easier through a website or an operator’s on-screen electronic or paper program guides.

This decision brings our rules fully in line with how consumers search for stations. So the elimination of these dated requirements has my support. But I want to point out that we have more work to do if we want to truly modernize the public file system that is the subject of our decision today.

Let me explain.

For decades, the FCC has required that broadcast stations keep a public file with information about the station’s operation and service to the community. These filings include things like station authorizations, contour maps, ownership reports, equal employment opportunity filings, reports on children’s television programming, materials related to investigations and complaints, and joint sales agreements. They also include a political file that features sponsorship information concerning political advertisements paid for by candidates, groups, and individuals; details on when they run; and what issues of national importance they discuss. Over time, the requirement to keep the public file was extended to others, including cable systems and direct broadcast satellite providers.

In 2012, the FCC decided it was time to begin uploading the contents of these public inspection files online. With this decision, the agency brought a new level of transparency to government. It moved documents from dusty file cabinets—the kind covered with cobwebs—to an online public portal. And slowly but surely, the agency expanded this portal to cover the range of different entities subject to public file obligations.

As a result, today, there are thousands and thousands of entities that post their public file online at the FCC.

So far, so good. But now the hard truth: this system is dated. These filings are not machine-readable. They cannot be processed by a computer. That means they are stuck in analog age format. They are not built for the era we live in now—where data is all. That means journalists, researchers, advocates, and the public at large do not have the ability to download, sort, aggregate, search our files in a meaningful way. That means it is all but impossible to use this system to study trends in everything from media ownership to political advertising. In fact, researchers have called our data “pretty useless,” and “effectively unusable.”

This matters. To understand why, consider that more than 3.3 million records were filed by broadcasters alone on the online political file in the last two years. That breaks down to more than 4,600 records filed per day. At a time when billions are spent on television advertising each election cycle, our online political file could be an invaluable tool for the public to know who is sponsoring candidates and trying to influence our elections. But right now, our data is so difficult to navigate, this is not possible.

I think we can do better. The Internal Revenue Service provides machine-readable data for non-profit organizations and allows for bulk downloads. The Federal Election Commission has standardized forms with machine-readable data and archives that make it possible to track trends over time. In other words, agencies across Washington have updated their online platforms. They offer machine-readable data—and in the process support transparency in elections. We should learn from their example. We should update the public file system for the digital age. It should be searchable, sortable, and downloadable. It should be transparent and useful for the public. So in our media modernization initiative, let me offer my colleagues a suggestion: if we truly want to be modern, working on a machine-readable format for the public file should come next.

**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.

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).

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 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.

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.

Accordingly, I approve in part and dissent in part.

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