

**Communications Commission
Washington, D.C. 20554**

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



The American Cable Association (“ACA”) hereby submits these comments in response to the Federal Communications Commission’s (“Commission”) Notice of Proposed Rulemaking on Channel Lineup Requirements – Sections 76.1705 and 76.1700(a)(4) (“NPRM”).¹ The NPRM proposes to eliminate Section 76.1705 of its rules, which requires cable systems to maintain a current listing of their channel lineup at their local office.² The NPRM also seeks comment on whether to eliminate Section

¹ *Channel Lineup Requirements – Sections 76.1705 and 76.1700(a)(4)*, Notice of Proposed Rulemaking, MB Docket Nos. 18-92 and 17-105 (rel. Apr. 17, 2018) (“NPRM”).

² 47 C.F.R. § 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.”).

76.1700(a)(4), which requires cable systems with more than 1,000 subscribers to make their channel lineups available via their online public inspection file.³

ACA agrees with the Commission that Section 76.1705 is “unnecessary and outdated,” and thus is ripe for elimination as part of the Commission’s broader efforts to modernize its media regulations.⁴ ACA also agrees with commenters who have previously advocated for the elimination of the channel lineup requirement from the Commission’s online public inspection file rules⁵ for the same reasons. Both rules are unnecessary and outdated because in today’s marketplace, defined by the Commission as effectively competitive,⁶ cable operators have every economic incentive to make such information available without a regulatory mandate, and absolutely no incentive to withhold it. Customers know that they can choose from multiple MVPDs, and are unlikely to purchase a video product without first determining what channels are offered, and whether they include those they want. Cable operators therefore have every incentive to disseminate that information as widely as possible, knowing full well that not making this information easily available will almost certainly mean the loss of potential and existing customers.

³ 47 CFR § 76.1700(a)(4) (requiring that cable operators of systems with 1,000 or more subscribers maintain in the online public file “a current listing of the cable television channels which that system delivers to its subscribers in accordance with § 76.1705.”).

⁴ See *Commission Launches Modernization of Media Regulation Initiative*, Public Notice, 32 FCC Rcd 4406 (2017) (“Media Modernization PN”).

⁵ See *Commission Launches Modernization of Media Regulation Initiative*, MB Docket No. 17-105, Comments of NCTA – The Internet & Television Association at 27 (filed Jul. 5, 2017); Comments of Verizon at 7-8 (filed Jul. 5, 2017); Reply Comments of Frontier Communications Corporation at 4 (filed Aug. 4, 2017); Reply Comments of ITTA – The Voice of America’s Broadband Providers at 4 (filed Aug. 4, 2017).

⁶ *Amendment to the Commission’s Rules Concerning Effective Competition; Implementation of Section 111 of the STELA Reauthorization Act*, Report and Order, 30 FCC Rcd 6574, ¶ 6 (2015) (adopting a rebuttable presumption that cable systems are subject to effective competition).

Because of these incentives, cable 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.⁷ Thus, it is unlikely that eliminating these rules will cause any harm, as consumers and others almost certainly look first to these alternative sources, which are more convenient and easier to access than either local offices or the Commission's Online Public Inspection File ("OPIF") database.⁸

In proposing to eliminate the requirement to maintain channel lineups locally, the Commission notes that most cable channel lineups can be found in the OPIF database, but that very small cable systems – those with fewer than 1,000 subscribers – are not required to maintain an online public file. The NPRM therefore asks whether there will "continue to be adequate access to information about the channels delivered by these smaller systems" if the Commission does eliminate Section 76.1705, since these systems do not maintain an online public file that contains channel lineup information.⁹

To help answer that question, ACA surveyed members who operate systems with fewer than 1,000 subscribers about their practices for providing channel lineup information to existing and prospective customers. The many who responded stated that they do provide channel listing information on their company's website.¹⁰ These

⁷ See NPRM, ¶ 3.

⁸ ACA has previously described how cumbersome it can be to navigate the OPIF database. See, *Electronic Delivery of MVPD Communications*, MB Docket Nos. 17-317 and 17-105, Reply Comments of the American Cable Association at 15-16 (filed Mar. 5, 2018). While ACA spoke specifically to the many steps needed to identify broadcast carriage election notices, searching for cable channel lineups is no less complicated.

⁹ NPRM, ¶ 9.

¹⁰ ACA received information about 265 systems with fewer than 1,000 subscribers. Of those 265 systems, there are only 9 systems for whom the operator does not maintain a company website or does
ACA Comments
MB Docket Nos. 18-92; 17-105
May 31, 2018

members also reported that they provide channel lineups when requested by customers or potential customers over the phone or by email, as well as in person, as is currently required.¹¹

All available evidence leads to one conclusion: the Commission should not hesitate to eliminate the requirement to maintain channel lineup information at their local facilities for cable systems serving fewer than 1,000 subscribers, notwithstanding these systems are not be subject to the online public inspection rules. First, these systems face the same competitive pressures as larger systems, and so have the same incentives to make access to channel lineup information as easy as possible. Second, survey evidence demonstrates that cable systems with fewer than 1,000 subscribers make such information available to the public online on their own websites and in other ways, even though they are only *required* to maintain channel lineups at their local facilities. Therefore, even if the Commission elects to eliminate Section 76.1705 and to retain Section 76.1700(a)(4), there is no need to impose new online public file or other requirements on systems with fewer than 1,000 subscribers.¹²

not post channel lineups on their website. These systems serve fewer than 3,500 subscribers in aggregate. In lieu of posting channel lineups on a company website, however, these operators reported that the information is made available in a variety of alternative ways, including online on independent websites such as Zap2it.com and TVGuide.com. Moreover, these operators reported providing channel lineups when requested over the phone, by email, or in person, as required by the existing rule. One of these operators even attested that when they receive a request for a channel lineup (which happens only rarely), they often *hand-deliver* channel guides to the customer's home!

¹¹ And, of course, all cable operators provide channel lineup information to customers at the point of purchase and annually thereafter pursuant to the Commission's subscriber notice rules. 47 C.F.R. § 76.1602(b).

¹² The Commission has consistently recognized the need to relieve small systems from public inspection file requirements, exempting systems with fewer than 1,000 subscribers from many of the requirements that apply to large operators, such as the political file, sponsorship identification, EEO records, and children's commercial programming records requirements. 47 C.F.R. § 76.1700(d). It would be paradoxical, then, to impose new records requirements during a proceeding that is designed to reduce regulatory burdens.

In launching its initiative to modernize its media regulations, the Commission's stated objective was to "eliminate or modify regulations that are outdated, unnecessary, or unduly burdensome."¹³ Both of the requirements under review in this proceeding fit the bill, as they have been made obsolete by the widespread availability of channel lineup information via company websites and other methods. For all the reasons stated above, in the absense of any regulatory mandate, cable operators will continue to make their channel lineups available to current and potential customers. The Commission should therefore adopt its proposals to eliminate both Section 76.1705 and 76.1700(a)(4).

Respectfully submitted,



Matthew M. Polka
President and Chief Executive Officer
American Cable Association
Seven Parkway Center
Suite 755
Pittsburgh, Pennsylvania 15220
(412) 922-8300

Mary C. Lovejoy
Vice President of Regulatory Affairs
Ross J. Lieberman
Senior Vice President of Government Affairs
American Cable Association
2415 39th Place, NW
Washington, DC 20007
(202) 603-1735

May 31, 2018

¹³ Media Modernization PN at 1.