

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

In the Matter of

Expansion of Online Public File Obligations
To Cable and Satellite TV Operators and
Broadcast and Satellite Radio Licensees

)
)
)
)

MB Docket No. 14-127

COMMENTS



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

Barbara S. Esbin
Bruce E. Beard
Scott C. Friedman
Cinnamon Mueller
1875 Eye Street, NW
Suite 700
Washington, DC 20006
(202) 872-6811

Ross J. Lieberman
Senior Vice President of Government Affairs
American Cable Association
2415 39th Place, NW
Washington, DC 20007
(202) 494-5661

Attorneys for the American Cable Association

March 16, 2015

EXECUTIVE SUMMARY

The American Cable Association (“ACA”) comments on the Commission’s proposal to expand to cable operators, DBS providers, and broadcast and satellite radio licensees the requirement that public inspection files be posted to the Commission’s online database. ACA supports the Commission’s planned phase-in for smaller systems and general exemption for cable systems with fewer than 1,000 subscribers should the Commission require cable operators to post and maintain their public inspection files in the Commission’s online database, and proposes several additional steps that the Commission should take to fully mitigate the disproportionate burdens that online public inspection files will place on small cable operators and small cable systems.

Additional Small Cable System and Cable Operator Relief. All cable systems with fewer than 2,500 subscribers should not be required to maintain their public inspection files in the Commission’s online database, and should also qualify for all public inspection file exemptions currently applicable to cable systems with fewer than 1,000 subscribers. Additionally, cable systems with fewer than 15,000 subscribers and not affiliated with a multichannel video programming distributor (“MVPD”) serving more than ten percent of all MVPD subscribers should not be required to maintain their public inspection files in the Commission’s online database, but should instead be required to only file contact information in the database and promptly respond via electronic means to requests for information after receipt of the request. Regulatory relief for these classes of systems will ensure that the public has easier access to the files without imposing significant burdens on operators of these systems or the Commission.

Relief for Operators That Use Third-Party Advertising Insertion Companies. Cable operators using third-party vendors for their local advertising insertions should be permitted to use alternative means to comply with the Commission’s requirement to upload political file records “immediately absent unusual circumstances.” Many smaller cable operators contract with third-parties for local advertising sales and insertions. Holding these operators to a strict standard of obtaining such information from the third-party vendor on an immediate basis can create a substantial burden. The Commission should allow these operators to comply with the political file requirement through alternative means, provide a safe harbor for those who choose to rely on a third party to assist in satisfying their obligations, and also consider how to facilitate more cost effective uploading of information by third parties on behalf of smaller cable operators in its design of the online uploading interface.

Relief for Operators That Use Buying Groups. Small cable operators using a buying group to negotiate some of their programming deals should be permitted to use alternative means to comply with a requirement to upload information into the Commission’s online database that they obtain from programmers, such as records regarding compliance with commercial limits in children’s programming. Most small and medium-sized cable operators utilize the National Cable Television Cooperative (“NCTC”) to negotiate their national programming deals. In many instances, NCTC will secure for its members and make available to them the information that is needed from programmers for their public file. Since it could be more cost effective for the buying group to take on the responsibility of uploading information for its members, the Commission should not preclude small and medium-sized operators from complying with the online public filing requirement through this or another alternative means, and should provide a safe harbor for operators choosing to rely on their buying group for this purpose. In addition, the Commission should ensure its online uploading interface is designed to easily allow these types of alternative forms of compliance.

Adoption of NCTA's Proposals. The National Cable and Telecommunications Association advances several proposals to streamline the scope of the Commission's cable public file requirements. Eliminating the channel lineup requirement, excluding headend location information from online public file, permitting operators to place a link to their EEO filing on their website in lieu of the EEO records, and requiring proof-of-performance test data and signal leakage logs and repair data to be provided only upon request will lessen administrative burdens on smaller cable operators, ease the transition to the online public inspection file, and eliminate outdated regulations.

No Census Tract or Block Information. Requiring all cable operators to provide census tract or census block geographic information for each cable system when the operator establishes its online public file will provide little, if any, utility to the public, and has the potential to be overly burdensome for cable operators that do not also provide broadband Internet service and file FCC Form 477. Such providers would not have previously had a reason to determine the census tracts and blocks that they serve. Since the Commission already collects general geographic information from cable operators on FCC Form 322, the Commission should at most require only that cable operators falling into this category provide zip code information.

TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY	1
II.	THE COMMISSION SHOULD PROVIDE ADDITIONAL REGULATORY RELIEF TO SMALL CABLE SYSTEMS AND SMALL CABLE OPERATORS.....	4
	A. The Commission Has Historically Adjusted Its Public Inspection File Regulations to Minimize Their Impact on Small Cable Systems.	5
	B. Changed Market Conditions Support Increasing the Small System Exemption to Include All Cable Systems With Fewer Than 2,500 Subscribers.	7
	C. Cable Systems with Fewer Than 15,000 Subscribers and Not Affiliated With a Larger MVPD Should Not Be Required to Maintain Their Public Inspection File in The Commission’s Online Database But Should Be Required To File Contact Information in the Database and Promptly Respond To Requests Through Electronic Means.	10
III.	THE COMMISSION SHOULD PERMIT OPERATORS THAT USE THIRD-PARTY ADVERTISING INSERTION COMPANIES ALTERNATIVE MEANS TO COMPLY WITH THE POLITICAL FILE REQUIREMENT	14
IV.	THE COMMISSION SHOULD PERMIT OPERATORS THAT USE BUYING GROUPS TO NEGOTIATE PROGRAMMING DEALS TO UTILIZE ALTERNATIVE MEANS TO COMPLY WITH CERTAIN ONLINE PUBLIC FILE REQUIREMENTS	17
V.	THE COMMISSION SHOULD ADOPT NCTA’S PROPOSALS TO LIMIT THE POTENTIAL BURDENS OF THE ONLINE PUBLIC FILE FOR SMALLER OPERATORS AND SYSTEMS	18
VI.	THE COMMISSION SHOULD NOT REQUIRE CABLE SYSTEMS TO INCLUDE CENSUS TRACT OR BLOCK INFORMATION WHEN ESTABLISHING THEIR ONLINE PUBLIC FILE IF NOT REQUIRED FROM THE OPERATOR FOR OTHER PURPOSES.....	20
VII.	CONCLUSION.....	21

I. INTRODUCTION AND SUMMARY

The American Cable Association (“ACA”) submits these comments in response to the Commission’s Notice of Proposed Rulemaking (“NPRM”) in the above-captioned proceeding.¹ The NPRM seeks comment on the Commission’s proposal to expand to cable operators, DBS providers, and broadcast and satellite radio licensees the requirement that public inspection files be posted to the Commission’s online database.² The Commission proposes to modernize its procedures for providing public access to cable, DBS, broadcast radio, and satellite radio files in a manner that avoids unnecessary burdens on these entities.³

ACA appreciates the Commission’s plans to take a measured approach in this proceeding. ACA supports the Commission’s planned phase-in for smaller systems and general exemption for cable systems with fewer than 1,000 subscribers should the Commission require cable operators to post and maintain their public inspection files in the Commission’s online database. These actions are a necessary first step toward limiting the burdens that small cable operators and operators of small cable systems will face if the Commission requires online public inspection files. Nonetheless, the Commission must take several additional steps to fully mitigate the disproportionate burdens that online public inspection files will place on small cable operators and small cable systems.

First, the Commission should expand the reach of its small cable system public inspection file exemptions. All cable systems with fewer than 2,500 subscribers should not be required to maintain their public inspection files in the Commission’s online database, and

¹ *Expansion of Online Public File Obligations To Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Notice of Proposed Rulemaking, MB Docket No. 14-127 (rel. Dec. 18, 2014) (“NPRM”).

² *Id.*, ¶ 1.

³ *Id.*, ¶ 13.

should also qualify for all public inspection file exemptions currently applicable to cable systems with fewer than 1,000 subscribers. Exempting these small systems and small operators from the online public inspection file requirement will provide vital relief for those operators who have the fewest administrative resources and are often disproportionately burdened by regulations, while also reducing the Commission's administrative costs required to enforce its public inspection file rules. Additionally, cable systems with fewer than 15,000 subscribers and not affiliated with a multichannel video programming distributor ("MVPD") serving more than ten percent of all MVPD subscribers should not be required to maintain their public inspection files in the Commission's online database, but should instead be required to only file contact information in the database and promptly respond via electronic means to direct requests for information after receipt of the request. Providing this relief for systems of this size will ensure that the public has easier access to the files without imposing significant burdens on operators of these systems or the Commission.

Second, the Commission should take action to ensure that smaller cable operators using third-party vendors for their local advertising insertions are not prohibited from using alternative means to comply with the Commission's requirement to upload political file records "immediately absent unusual circumstances." Many smaller cable operators contract with third-parties for local advertising sales and insertions. For example, Comcast Spotlight, Time Warner Cable Media, and ViaMedia provide advertising sales and insertion to many cable operators. Holding operators to a strict standard of obtaining such information from the third-party vendor and uploading it on an immediate basis can create a substantial burden. Accordingly, the Commission should not prohibit these operators from complying with the political file requirement through alternative means, such as having their third-party vendor take on the responsibility for them, and should establish a safe harbor for operators who reasonably rely on

their third-party vendors for this purpose. The Commission should also consider how to facilitate more cost effective uploading of information for the political file by third parties on behalf of smaller cable operators in its design of its online uploading interface.

Third, the Commission should take similar action to ensure that small cable operators using a buying group to negotiate some of their programming deals are not prohibited from using alternative means to comply with the Commission's requirement to upload information that they obtain from programmers such as records required regarding compliance with commercial limits in children's programming. Most small and medium-sized cable operators utilize a single buying group, the National Cable Television Cooperative ("NCTC"), to negotiate their national programming deals. In many instances, NCTC will secure and make available to its members the information that they need from programmers for their public files. Since it could be more cost effective for the buying group to take on the responsibility of uploading information for its members, the Commission should not preclude small and medium-sized operators from complying with the online public filing requirement through this or another alternative means, and should establish a safe harbor for operators who reasonably rely on their buying group for this purpose. The Commission should also look into how their online uploading interface can be configured to permit more cost effective uploading of information by a buying group on behalf of its members.

Fourth, the Commission should adopt NCTA's proposals to streamline the scope of the Commission's cable public file requirements. Eliminating the channel lineup requirement, excluding headend location information from online public file, permitting operators to place a link to their EEO filing on their website in lieu of the EEO records, and requiring proof-of-performance test data and signal leakage logs and repair data to be provided only upon request

will lessen administrative burdens on smaller cable operators, ease the transition to the online public inspection file, and eliminate outdated regulations.

Finally, the Commission should not require all cable operators to provide census tract or block geographic information for each cable system when the operator establishes its online public file. This proposal has the potential to be overly burdensome for cable operators that do not also provide broadband Internet service and file FCC Form 477, which requires such information. Since the Commission already collects general geographic information from cable operators on FCC Form 322, at most the Commission should require only that cable operators falling into this category provide zip code information.

II. THE COMMISSION SHOULD PROVIDE ADDITIONAL REGULATORY RELIEF TO SMALL CABLE SYSTEMS AND SMALL CABLE OPERATORS

The NPRM proposes to exempt cable systems with fewer than 1,000 subscribers from all online public file requirements, either permanently or at least initially;⁴ seeks comment on the appropriate definition of a “small cable system” for purposes of the political file exemption;⁵ and seeks comment on “any other suggestions for ways to provide regulatory relief to very small cable systems.”⁶ ACA supports permanently exempting cable systems with fewer than 2,500 subscribers from all online public file requirements and submits that these systems should qualify for all public inspection file exemptions currently applicable to cable systems with fewer than 1,000 subscribers.⁷ In addition, all systems with fewer than 15,000 subscribers and not affiliated with an MVPD serving more than ten percent of all MVPD subscribers should be

⁴ *Id.*, ¶ 46.

⁵ *Id.*, ¶ 48.

⁶ *Id.*, ¶ 46.

⁷ Systems with fewer than 1,000 subscribers are exempt from these public inspection file requirements: political file, sponsorship identification, EEO records, commercial records for children’s programming, proof-of-performance test data, and signal leakage logs and repair records. See 47 C.F.R. § 76.1700(a).

exempt from the requirement to maintain their public inspection files in the Commission's online database. Instead, these providers should only be required to file contact information in the database and respond via electronic means to direct requests promptly after receipt of a request.

A. The Commission Has Historically Adjusted Its Public Inspection File Regulations to Minimize Their Impact on Small Cable Systems.

The Commission has long recognized that very small cable systems have far fewer resources to devote to meeting their regulatory obligations, including the public inspection file. Just three years after the Commission first established public inspection file requirements for all cable systems in 1974, it relieved cable systems with less than 500 subscribers from the burdens of complying with a number of Commission regulations, including the public inspection file requirement.⁸ The Commission explained that maintaining a public inspection file is difficult for small systems that may have part-time employees, may have no business office in their communities, and may not be familiar with the Commission's rules.⁹ Moreover, at the same time, the Commission released a Further Notice of Proposed Rulemaking considering whether to expand the small system exemption to all systems with fewer than 1,000 subscribers.¹⁰

⁸ *Amendment of Part 76 of the Commission's Rules and Regulations Relative to Obligations of Cable Television Systems to Maintain Public Inspection Files, Keep Records of Subscribers and Permit System Inspections*, Report and Order, 48 F.C.C.2d 72 (1974); *Amendment of Part 76 of the Commission's Rules and Regulations with Respect to the Definition of a Cable Television System and the Creation of Classes of Cable Systems*, First Report and Order, 63 FCC.2d 956, ¶ 5 (1977) ("A class of smaller systems having between 50 and 499 subscribers will be created to which only a limited number of regulations will apply....They will be exempt from...the public inspection file requirements.").

⁹ *Id.*, ¶ 66.

¹⁰ *Id.*, ¶ 5 ("Simultaneously with the release of this Report and Order a Further Notice of Proposed Rulemaking is being issued to consider and obtain additional comment on whether the new limited regulations now applicable to systems of between 50 and 499 subscribers should be extended to systems of between 500 and 999 subscribers.")

One year later, the Commission raised the exemption threshold to 1,000 subscribers in an attempt to reduce the burdens of regulation for these systems and to reduce the Commission's own burdens.¹¹ The Commission explained that full regulation of systems with fewer than 1,000 subscribers “appears both burdensome and inefficient” and the costs of regulatory compliance for these systems appeared to be “disproportionately high.”¹² Moreover, the Commission observed that full regulation of these small systems required a disproportionate amount of Commission resources.¹³ Noting that, on a headend basis, systems with fewer than 1,000 subscribers constituted 42 percent of the nation's cable systems, the Commission observed that these systems served only six percent of all cable subscribers.¹⁴ Distilled further, these subscribers constituted less than one percent of the nation's total 70,573,300 television households.¹⁵ Put another way, the Commission weighed the relatively small overall impact of the exemption on the public against the high cost and inconvenience of compliance for small cable systems and found that a larger exemption would serve the public interest.

In the years since establishing the small system exemption, the Commission has periodically noted its importance.¹⁶ When the Commission reexamined its public inspection file requirements in 1999, it retained the small system exemption and created a new exemption for

¹¹ *Amendment of Part 76 of the Commission's Rules and Regulations with Respect to the Definition of a Cable Television System and the Creation of Classes of Cable Systems*, Second Report and Order, 68 FCC.2d 18, ¶ 18 (1978) (“In this proceeding, as was the case in our First Report and Order, two of our strongest motivating factors are (1) to reduce the burdens of regulation from these systems and, (2) to reduce the Commission's own burdens attendant to full regulation of these systems.”).

¹² *Id.*, ¶ 19.

¹³ *Id.*

¹⁴ *Id.* (six percent at that time totaled 571,933 subscribers).

¹⁵ *Id.*

¹⁶ See *Amendment of Part 76 of the Commission's Rules and Regulations Relative to the Obligations of Cable Television Systems to Maintain Public Inspection Files and Retain Subscriber Records*, Report and Order, 99 F.C.C.2d 959 (1985) (exempting cable systems with fewer than 1,000 subscribers from the requirement to maintain a public inspection file).

slightly larger cable systems.¹⁷ Certain recordkeeping requirements for cable systems serving 1,000 or more subscribers but fewer than 5,000 subscribers were amended so that these systems must provide the information only upon request.¹⁸ Finding that this action would exempt approximately 79 percent of cable systems serving 12 percent of all subscribers from the public inspection rules, the Commission explained that this action would provide regulatory relief to a greater number of small cable systems while ensuring that the public continues to have access to important public file information.¹⁹

B. Changed Market Conditions Support Increasing the Small System Exemption to Include All Cable Systems With Fewer Than 2,500 Subscribers.

The Commission should permanently exempt cable systems with fewer than 2,500 subscribers from all online public file requirements, and extend to systems with fewer than 2,500 subscribers all public inspection file exemptions currently applicable to cable systems with fewer than 1,000 subscribers. Extending these exemptions to systems with fewer than 2,500 subscribers would help ease regulatory burdens on these very small systems.

As the history of the Commission's public inspection file regulations demonstrates, the Commission has adjusted its regulations on multiple occasions to provide relief for small cable systems. Yet, even though the television marketplace has changed significantly over the last few decades, the Commission's last action in this arena occurred over 15 years ago.²⁰ In a

¹⁷ *1998 Biennial Regulatory Review – Streamlining of Cable Television Services Part 76 Public File and Notice Requirements*, Report and Order, 14 FCC Rcd 4653, ¶ 25 (1999) (“1999 Public File Order”).

¹⁸ *Id.*, ¶ 25. See also 47 C.F.R. § 76.1700(a) (requiring systems with more than 1,000 subscribers but fewer than 5,000 subscribers to provide sponsorship identification, EEO records, commercial records for children's programming, proof-of-performance test data, and signal leakage logs and repair records only upon request).

¹⁹ 1999 Public File Order, ¶ 25.

²⁰ ACA has repeatedly emphasized that the television marketplace has changed significantly over the last few decades. See, e.g., *Amendment of the Commission's Rules Related to Retransmission Consent*, Report and Order, and Further Notice of Proposed Rulemaking, MB Docket No. 10-71, Comments of the

filing with the Commission last June, ACA highlighted that cable operators served 58.5 million households, more than ten times as many households as cable operators served in 1975.²¹ ACA further explained that where the Commission estimated that 14.7 percent of cable subscribers received service from a cable system with 1,000 or fewer subscribers in the 1970s, the numbers as of 2014 were dramatically lower.²²

According to NCTA, 3,681 cable systems (not affiliated with MVPDs serving more than 10 percent of the market) served 2,500 or fewer subscribers in 2011, for a combined total of 2,345,916 subscribers, or four percent of the total number of cable subscribers in that year.²³ This is a lower percentage than the Commission found served by cable systems with fewer than 1,000 subscribers in 1978. With Nielsen estimating 116.3 million television households in 2014,²⁴ systems with fewer than 2,500 subscribers (excluding systems owned by MVPDs with more than 10 percent of the market) represented approximately two percent of all television households. Put another way, expanding the public inspection file exemption to all cable systems with fewer than 2,500 subscribers would affect a smaller percentage of cable subscribers and television households than in 1978.

While much has changed in the cable industry over the last four decades, one thing has remained consistent – the costs of complying with Commission regulations, including public inspection file requirements, continue to fall most heavily on smaller cable systems that operate

American Cable Association, at 23-27 (filed June. 26, 2016) (“ACA Retransmission Consent Further Notice Comments”).

²¹ *Id.* at 23 (citing *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 12-203, Fifteenth Report, 28 FCC Rcd 10496, ¶ 3 (2013)).

²² *Id.* at 24.

²³ *Id.*

²⁴ *Id.* (citing *Nielsen Estimates 116.3 Million TV Homes in the U.S., up 0.4%*, May 5, 2014, available at <http://www.nielsen.com/us/en/newswire/2014/nielsen-estimates-116-3-million-tv-homes-in-the-us.html> (for 2014, the number of TV households has remained relatively stable at 116.3 million homes)).

under perpetually constrained financial conditions, especially in light of increased regulation in the past decade.²⁵ Commission regulations have an especially high impact because operators of small cable systems must spread these fixed costs, whether financial or administrative, over far fewer customers. ACA recently provided the Commission with evidence that the number of smaller cable systems in the market is trending downward.²⁶ Moreover, it is well established that small businesses are less able to bear the costs of regulation than larger businesses,²⁷ and the Commission should take into account the cumulative impact of compliance with all its regulations has on smaller cable operators, including the compliance costs associated with the Commission's recent broadband Internet access reclassification decision.²⁸ Regulatory relief could well contribute to a small cable operator's decision to stay in business rather than shuttering small systems in the small and rural communities they serve.

²⁵ See, e.g., *Modernizing the FCC Form 477 Data Program*, Report and Order, 28 FCC Rcd 9887 (2013); *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans*, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 9691 (2008); *Closed Captioning and Video Programming, Closed Captioning Requirements for Digital Television Receivers*, Declaratory Ruling, Order and Notice of Proposed Rulemaking, 23 FCC Rcd 16674 (2008); *Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc., Petition for Rulemaking*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 2221 (2014); *In the Matter of Protecting and Promoting the Open Internet, Report and Order on Remand, Declaratory Ruling, and Order*, GN Docket No. 14-28 (rel. Mar. 12, 2015) ("Open Internet Order").

²⁶ *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 14-16, Comments of the American Cable Association, at 7 (filed Mar. 21, 2014) ("1,078 small and rural cable systems, serving approximately 50,000 subscribers, have ceased providing video service in their communities since 2008."). ACA reported the following system closures by year: 133 closed in 2013 (8,061 subscribers); 129 closed in 2012 (4,050 subscribers); 179 closed in 2011 (7,684 subscribers); 148 closed in 2010 (6,389 subscribers); 282 closed in 2009 (9,309 subscribers); and 207 closed in 2008 (14,503 subscribers). See *id.* at 7, n. 18.

²⁷ Small Business Administration studies show that regulatory compliance costs per employee are 42 percent higher in small companies (defined as those with fewer than 20 employees) compared with mid-sized firms (defined as those with between 20 and 499 employees), and 36 percent higher in small firms than in large firms (defined as those with 500 or more employees). See Nicole V. Crain, W. Mark Crain, Lafayette College, *The Impact of Regulatory Costs on Small Firms*, Small Business Administration, Office of Advocacy, pp. 54-55 (rel. Sept. 2010).

²⁸ See Open Internet Order.

In summary, the Commission should exempt cable systems with fewer than 2,500 subscribers from all online public file requirements, and expand all public inspection file exemptions currently applicable to cable systems with fewer than 1,000 subscribers to cable systems with fewer than 2,500 subscribers.

C. Cable Systems with Fewer Than 15,000 Subscribers and Not Affiliated With a Larger MVPD Should Not Be Required to Maintain Their Public Inspection File in The Commission’s Online Database But Should Be Required To File Contact Information in the Database and Promptly Respond To Requests Through Electronic Means.

The Commission should also exempt all systems with fewer than 15,000 subscribers and not affiliated with an MVPD serving more than ten percent of all MVPD subscribers from the requirement to maintain their public inspection files in the Commission’s online database. These systems should only be required to file contact information in the online database so that the public may contact the systems with document requests (which the system would fulfill by electronic means promptly after receipt of the request). Exempting these systems from the online public file requirements and requiring them to respond promptly to online requests for information strikes an appropriate balance between reducing administrative burdens on small cable operators and ensuring that the public has easy access to important public file information.²⁹

ACA’s proposed relief for cable systems with fewer than 15,000 subscribers is consistent with the FCC’s efforts to streamline its public inspection file requirements for smaller

²⁹ In addition to general regulatory relief for small cable systems, the NPRM seeks comment on the appropriate definition of “small cable system” for purposes of the political file exemption and on the appropriate period of time the Commission should exempt small systems from the requirement to commence posting political file material online. In particular, the Commission asks whether it should define “small cable system” for purposes of the political file exemption as a system with fewer than 15,000 subscribers that is not affiliated with a larger operator serving more than ten percent of all MVPD subscribers. See NPRM, ¶ 48.

operators.³⁰ In its 1999 Public File Order, the Commission provided relief to systems with more than 1,000 but fewer than 5,000 subscribers by permitting them to only provide certain records upon request in lieu of maintaining the information in their public file.³¹ The Commission characterized this relief as an attempt to “provide regulatory relief to a greater number of small cable systems while ensuring that the public continues to have access to important public file information.” In 2001, the Commission further clarified that systems with more than 1,000 but fewer than 5,000 subscribers need not maintain these records at a particular site, provided that they are made “promptly available once a request is received.”³²

The rationale for providing the extra relief granted in 1999 to systems with more than 1,000 but fewer than 5,000 subscribers remains important and should be preserved as the Commission moves the cable industry’s public files online. At a minimum, cable operators with more than 1,000 but fewer than 5,000 subscribers should not be required to post and maintain in the Commission’s online database information that they are not required to include in their public file, and instead should only be required to promptly provide this information via electronic means to individuals upon request.³³ But this alone would not be sufficient. Regularly posting any information online would be most burdensome for operators with fewer than 15,000 subscribers, suggesting that the subscriber threshold for relief from the online public file

³⁰ 1999 Public File Order, ¶ 25.

³¹ *Id.*; see also 47 C.F.R. § 76.1700(a) (requiring systems with more than 1,000 subscribers but fewer than 5,000 subscribers to provide sponsorship identification, EEO records, commercial records for children’s programming, proof-of-performance test data, and signal leakage logs and repair records only upon request).

³² *1998 Biennial Regulatory Review – Streamlining of Cable Television Service Party 76 Public File and Notice Requirements*, Second Report and Order, 16 FCC Rcd 19773, ¶ 5 (2001) (“2001 Public File Order”).

³³ The NPRM proposes that records that need only be disclosed upon request be included in a system’s online public file. NPRM, ¶ 45 (“We propose that cable systems be required to upload other material currently required to be maintained for public inspection or made available to the public ‘upon request.’”).

requirement be increased to systems of this size. Specifically, ACA suggests that the Commission permit cable systems not subject to the online filing exemption with fewer than 15,000 subscribers and not affiliated with an MVPD serving more than ten percent of all MVPD subscribers to continue to maintain a public inspection file, but not require the system to upload any of the contents online. These operators with fewer than 15,000 subscribers but not subject to the online filing exemption would be required to promptly respond to requests for public file records, and would be required to provide such information via electronic means.

Congress and the Commission have long recognized that Commission regulatory requirements should be tailored to avoid disproportionate burdens on smaller cable operators and operators of small cable systems. The 1992 Cable Act and the 1996 Telecommunications Act both contain Congress's express recognition of the public interest in reducing administrative and entry barriers for small entities.³⁴ Likewise, the Commission has taken numerous actions to relieve small entities of disproportionately burdensome regulations in recognition of the importance to the public interest of maintaining a viable smaller cable industry sector.³⁵ In providing small system relief from rate regulation in 1995, the Commission concluded that systems with fewer than 15,000 subscribers "do not have access to the financial resources, purchasing discounts, and other efficiencies of larger companies."³⁶ As a result, these small

³⁴ See 47 USC § 543(i) (directing the Commission to develop and prescribe regulations pursuant to this section that reduce the administrative burdens and costs of compliance for small cable systems); 47 U.S.C. § 543(m) (providing greater deregulation for small systems); 47 U.S.C. §§ 247(a) and (b) (requiring the Commission to eliminate market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services).

³⁵ See, e.g., *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 (1995) ("Rate Regulation Small System Order"); *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Leased Commercial Access*, Second Report and Order and Second Order on Reconsideration of the First Report and Order, 12 FCC Rcd. 5267 (1997).

³⁶ Rate Regulation Small System Order, ¶ 28.

systems “face difficult challenges in attempting simultaneously to provide good service to subscribers, to charge reasonable rates, to upgrade networks, and to prepare for potential competition.”³⁷ Over the past 15 years, the Commission has repeatedly concluded that small systems need additional regulatory relief from rules of general applicability.³⁸ In particular, in implementing the CALM Act, the Commission determined that “small MVPD systems,” with fewer than 15,000 subscribers (as of December 31, 2011) that are not affiliated with a larger operator serving more than ten percent of all MVPD subscribers, would be eligible for a streamlined waiver process.³⁹ Extending relief to small cable operators so that they may comply with public file obligations by supplying information “upon request” beyond the current 5,000 subscriber cap to operators with fewer than 15,000 subscribers and not affiliated with an MVPD serving more than 10 percent of MVPD subscribers is warranted.

ACA’s proposal balances the public need for the information against the burden of compliance on small operators by requiring that systems with fewer than 15,000 subscribers that are not affiliated with a larger operator serving more than ten percent of all MVPD subscribers file contact information in the Commission’s online database and respond to requests for information promptly receipt of a request. This preserves public access to the public file and allows the public to identify which cable systems qualify for the exemption.

In summary, the Commission should adopt ACA’s proposal and exempt systems with fewer than 15,000 subscribers and not affiliated with an MVPD serving more than ten percent of all MVPD subscribers from the requirement to maintain their public inspection files in the

³⁷ *Id.*, ¶ 25.

³⁸ See, e.g., Rate Regulation Small System Order, 1999 Public File Order, 2001 Public File Order; *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules*, Fourth Report and Order, 23 FCC Rcd 13618 (2008).

³⁹ *Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, Report and Order, 26 FCC Rcd 17222 ¶ 54 (2011) (“CALM Act Order”).

Commission's online database and should use ACA's recommended contact information "upon request" approach instead.

III. THE COMMISSION SHOULD PERMIT OPERATORS THAT USE THIRD-PARTY ADVERTISING INSERTION COMPANIES ALTERNATIVE MEANS TO COMPLY WITH THE POLITICAL FILE REQUIREMENT

The NPRM invites comment on whether there are any aspects of the Commission's current cable political file requirements that are unclear and that should be clarified in connection with the transition to an online political file.⁴⁰ ACA asserts that the Commission should take into consideration that many small cable operators contract with third parties for local advertising insertions, and that the availability of alternative compliance methods and safe harbor mechanisms based on smaller operators' reliance on the third-party vendors to insert its advertisements could help ease the burden on small operators.

Many small and mediums-sized cable operators do not insert their own advertising. In fact, smaller cable operators predominantly rely on third-party advertising insertion companies such as Comcast Spotlight, Time Warner Cable Media, or Viamedia. Programming agreements typically give cable operators two or three minutes of advertising time per hour of programming for the operator's use. Because these time slots are generally consistent across the industry, third-party advertising insertion companies can sell advertising, including political advertising, across multiple cable systems and insert the same commercials on each system. For small cable operators, these third-party inserters of local commercials provide a valuable service that small operators would otherwise not have the resources to devote to – namely, the selling, administration, and insertion of advertising. In return for selling advertising on the cable operator's behalf, the cable operator and the third-party inserter share the advertising revenue.

⁴⁰ NPRM, ¶ 47.

The role of these cable operators is normally limited to deploying equipment that the third-party vendor requires to facilitate the insertion of the advertisement.⁴¹

The Commission's regulations require that advertising records be placed in the political file "as soon as possible," and define as soon as possible as "immediately absent unusual circumstances."⁴² However, cable operators who utilize third-party advertising insertion vendors must rely on these vendors to provide documentation of political advertisement sales for placement in the public inspection file. These cable operators have no means to obtain these records except from their vendors who are the entities that contract for the sale of this political advertising. This is true for all operators of cable systems served by the same third-party vendor in a region because the same political advertising is usually inserted on all these systems, and in many cases, a cable operator must obtain the exact same political advertising sales information for placement in the public inspection file as others in the market.

Because of this fact, ACA recommends that the Commission reconsider its political file regulations to ensure that smaller cable operators and third-party vendors can work together to find the most efficient means of uploading political file records to the Commission's online database or, alternatively, provide a means whereby the third-party vendor ensures public online access to the relevant political file records of a cable system. The Commission should provide flexibility with respect to how smaller cable operators must post their political records to the proposed online database. For example, the Commission should not prohibit cable operators from contracting with their third-party advertising insertion vendors to insert the

⁴¹ See *Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, MB Docket No. 11-93, Comments of the American Cable Association, at 22-23 (filed July 8, 2011) (describing the role of cable operators when contracting with third parties for local advertising insertions).

⁴² See 47 C.F.R. § 76.1701(c) ("All records required by this paragraph shall be placed in the political file as soon as possible and shall be retained for a period of two years. As soon as possible means immediately absent unusual circumstances.").

relevant information in the operator's political file on the operator's behalf. Moreover, the Commission should not prevent smaller cable operators that use a third-party local advertising vendor from providing a link in their public files to an alternative online location where the political file information is populated and managed by the third-party advertising vendor or another third-party. In either case, because the cable operator is relying on a third-party to maintain and procure these records, the operator should have the ability to rely on a certification from the third-party that the records are posted on time and kept in compliance with the Commission's regulations and the certification should allow the operator to qualify for a safe harbor.⁴³ The Commission should also consider how to facilitate more cost effective uploading of information for the political file by third parties on behalf of smaller cable operators in its design of its online uploading interface.

Providing small cable operators that use third-party vendors for local advertising insertions, including political advertisements, the opportunity to satisfy their political file requirements through alternative means, and rely on a safe harbor to procure the records, will give small cable operators the flexibility to meet the Commission's political file obligations in the most cost-efficient manner possible.⁴⁴

⁴³ See, e.g., CALM Act Order, ¶ 45 ("Specifically, we find that, in order to be in the safe harbor for the commercials inserted by these third parties, the station or MVPD, regardless of size, must acquire a certification from the third party that all commercials it is inserting comply with the RP, and that it is inserting those commercials into the programming transmitted by the station or MVPD such that they comply with the RP. Just as with embedded commercials, in response to a FCC Letter of Inquiry, a station or MVPD must have no reason to believe that the certification is false, and perform a spot check of the inserted commercials without providing notice to the third-party inserter to determine, going forward, whether the inserted commercials in fact comply, and take steps to ensure that any discovered noncompliance is remedied.") (footnotes omitted).

⁴⁴ Similarly, if the Commission exempts all systems with fewer than 15,000 subscribers and not affiliated with an MVPD serving more than ten percent of all MVPD subscribers from the requirement to post and maintain their public inspection files in the Commission's online database in lieu of an obligation to promptly provide such information upon request, such systems should have the ability to provide the political advertising by such alternative means and rely on the same safe harbor mechanism.

IV. THE COMMISSION SHOULD PERMIT OPERATORS THAT USE BUYING GROUPS TO NEGOTIATE PROGRAMMING DEALS TO UTILIZE ALTERNATIVE MEANS TO COMPLY WITH CERTAIN ONLINE PUBLIC FILE REQUIREMENTS

In addition to permitting cable operators that use third-party advertising insertion vendors an alternative means to comply with the political file requirement, the Commission should take action to ensure that small cable operators using a buying group to negotiate some of their programming deals also may use an alternative means to comply with the Commission's requirement to upload information to their online public inspection file that they must obtain from programmers.

Most small and medium-sized cable operators utilize the NCTC to negotiate their national programming deals. In many instances, NCTC will secure for its members whatever information is needed from programmers, and make it available for download by the members. This includes documentation that the programming provided to each member complies with the Commission's children's advertising limits.⁴⁵ In most cases, the documentation received from the programmer is the same information that all cable operators who carry the programming receive and insert into their public file.

Given these circumstances, the Commission's online public filing requirements should not preclude smaller cable operators and their buying group from working together to find the most cost effective way for the cable operator to meet its obligation to make information contained in its public file available to the public in an online format. For example, similar to the Commission's EEO proposal, a similar link could be provided to the buying group's website, where the public would be able to review the children's programming certifications. In the alternative, the buying group could post the certifications directly in the Commission's online

⁴⁵ See 47 C.F.R. §§ 76.1703, 76.225.

database, with operators providing a link to that location in their public files. Another alternative may be that the buying group agrees to post the information in its members' public files on their behalf. Whatever the alternative, the operator must be able to take advantage of a safe harbor by relying on the certification of their buying group that the buying group will satisfy the operator's obligations.⁴⁶ The Commission can help by looking into how their online uploading interface can be configured to permit more cost effective uploading of information by a buying group on behalf of its members. The goal, as with establishing an alternative means for political file compliance, is to give small cable operators the flexibility to meet the Commission's online public file obligations in the most cost efficient manner possible.

V. THE COMMISSION SHOULD ADOPT NCTA'S PROPOSALS TO LIMIT THE POTENTIAL BURDENS OF THE ONLINE PUBLIC FILE FOR SMALLER OPERATORS AND SYSTEMS

The NPRM seeks comment on a number of proposals put forth by the National Cable and Telecommunications Association ("NCTA").⁴⁷ NCTA argues that the Commission should streamline cable public file requirements to avoid requiring cable operators to incur the cost of posting unnecessary material.⁴⁸ Though the Commission declined to undertake a comprehensive review of the cable public inspection file requirements, it proposes to clarify certain requirements.

Specifically, the Commission proposes to (i) clarify that proof-of-performance test data and signal leakage logs and repair records need not be made available online; (ii) exclude

⁴⁶ Again, if the Commission exempts all systems with fewer than 15,000 subscribers and not affiliated with an MVPD serving more than ten percent of all MVPD subscribers from the requirement to maintain their public inspection files in the Commission's online database and instead imposes an obligation to promptly provide such information upon request, such systems should have the ability to provide this information by such alternative means including taking advantage of the safe harbor mechanism.

⁴⁷ NPRM, ¶¶ 52-54.

⁴⁸ NPRM, ¶ 52 (citing NCTA Comments at 6-8).

headend location information from any online public inspection file; and (iii) eliminate the requirement that cable operators post certain EEO materials on the operator's website.⁴⁹ In addition, the Commission seeks comment on NCTA's request that the Commission review the ongoing need for channel lineups to be placed in the public inspection file since this information is provided to consumers in paper format and is available on operators' websites.⁵⁰ Though the Commission does not believe it would be burdensome for operators to upload channel lineups already maintained electronically, the Commission seeks comments on whether operators should be permitted to provide a link directly to an online channel lineup in lieu of uploading this information to the public file.⁵¹

ACA supports these changes. Adopting these proposals will lessen the administrative burdens on smaller cable operators, ease the complexity of the transition to the online public inspection file, and eliminate outdated and unnecessary regulations. ACA also agrees that a simple link to the channel lineups on an operator's website should be an alternative means of compliance as it would limit the need for the cable operator to update the information to one place. The Commission should adopt all of NCTA's proposed changes, including permitting operators to provide a link directly to an online channel lineup in lieu of uploading this information to the public file.

⁴⁹ NPRM, ¶¶ 52-54.

⁵⁰ NPRM, ¶ 43; *see also* 47 C.F.R. § 76.1602(b) (requiring cable operators to provide channel lineups to subscribers at the time of installation, annually, and upon request).

⁵¹ *Id.*

VI. THE COMMISSION SHOULD NOT REQUIRE CABLE SYSTEMS TO INCLUDE CENSUS TRACT OR BLOCK INFORMATION WHEN ESTABLISHING THEIR ONLINE PUBLIC FILE IF NOT REQUIRED FROM THE OPERATOR FOR OTHER PURPOSES

The Commission proposes to require cable operators, when first establishing their online public file, to provide a list of the geographic areas served by the system by zip code.⁵² The Commission also seeks comment on whether to instead require cable operators to provide this information by census tract or block data.⁵³ Providing census tract or block information will provide little, if any, utility to the public, while burdening cable operators that do not file FCC Form 477 with a new reporting requirement.

Cable operators already provide the Commission with the precise geographic information that the Commission seeks.⁵⁴ Prior to commencing operation of a system in an area, Commission regulations require a cable operator to file FCC Form 322 (a “Registration Statement”).⁵⁵ Cable operators filing a Registration Statement must include seven pieces of information on the form, including *the name of the community or area served and the county in which it is located*.⁵⁶ Upon receipt of a Registration Statement and filing fee, the Commission assigns a Community Unit Identifier (“CUID”) to the community, and the CUID information is maintained in the Media Bureau’s COALS database. Moreover, Commission regulations require cable operators to include the CUID on subscriber bills, ensuring that the public and

⁵² NPRM, ¶ 50.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ See 47 C.F.R. § 76.1801(a).

⁵⁶ See 47 C.F.R. § 76.1801(a)(5).

local franchise authorities can access the Registration Statement and other electronic filings maintained in the COALS database.⁵⁷

Providing additional geographic information on a census tract or block basis places a new and substantial burden on cable operators who currently are not required to determine such information. Specifically, small cable operators that do not offer broadband Internet access service do not currently file FCC Form 477 and thus are unlikely to have determined the census information for their systems. Compiling census data would be an entirely new burden for these cable operators. In addition, most consumers search for their provider based on the information the Commission already has – the name of the community served – or via information the Commission proposes to collect – zip codes. Consumers do not typically associate their residence with a specific census tract or census block and are likely unaware of what census track or census block they actually reside in, and it is unlikely any member of the public would search by census block or census track. Reliance on the community name and CUID, and, if the Commission requires it, zip codes, is the better alternative and is information that cable operators can readily provide to the Commission, if it has not already (i.e. zip codes).

VII. CONCLUSION

The Commission's proposal to expand to cable operators the requirement that public inspection files be posted, and maintained, in the Commission's online database will place additional regulatory burdens on small cable operators and small cable systems. With these comments, ACA advances a number of common sense proposals that will provide relief for those operators who have the fewest administrative resources and are often disproportionately burdened by regulations, while also reducing the Commission's administrative costs required to

⁵⁷ See 47 C.F.R. § 76.952(b) (all cable operators must provide the FCC community unit identifier for the cable system on monthly subscriber bills).

enforce its public inspection file rules. ACA has also taken steps to ensure that its proposals address the need for the public to have access to important public files, including the political file. The result is targeted relief for cable systems (i) with fewer than 2,500 subscribers; (ii) with fewer than 15,000 subscribers and not affiliated with an MVPD serving more than ten percent of all MVPD subscribers; (iii) that contract with third-party vendors for their local advertising insertions; and (iv) that rely on NCTC, or other buying groups, for programmer certifications of compliance with the Commission's children's advertising limits, along with general relief for all cable systems under NCTA's proposals to streamline the public inspection file requirements. Finally, the Commission should not add any new burdens – small cable operators that do not offer broadband Internet access service and thus do not currently file FCC Form 477 on a census tract or block basis should not be required to provide such census based geographic information when the operator establishes its online public file. Reliance on the community name and CUID, and, if the Commission requires it, zip codes, is the better alternative.

Respectfully submitted,

AMERICAN CABLE ASSOCIATION

By: 

Matthew M. Polka
President and CEO
American Cable Association
875 Greentree Center
Seven Parkway Center
Suite 755
Pittsburgh, Pennsylvania 15220

(412) 922-8300

Ross J. Lieberman
Vice President of Government Affairs
American Cable Association
2415 39th Place, NW
Washington, DC 20007

(202) 494-5661

March 16, 2015

Barbara S. Esbin
Bruce E. Beard
Scott C. Friedman
Cinnamon Mueller
1875 Eye Street, NW
Suite 700
Washington, DC 20006

(202) 872-6811

Attorneys for American Cable Association