

FCC FACT SHEET*

Modernization of Media Regulation Initiative:

Proposed Elimination of Cable Channel Lineup Requirements – Sections 76.1705 and 76.1700(a)(4)

Notice of Proposed Rulemaking – MB Docket Nos. 17-105 and 18-92

Background: Section 76.1705 of our rules requires every cable operator “to maintain at its local office a current listing of the cable television channels” delivered by the system to its subscribers. This requirement was originally adopted in 1972 as part of the Commission’s technical standard performance rules for cable. Section 76.1700(a)(4) of our rules requires that cable operators of systems with 1,000 or more subscribers make their channel lineup available to the public via the Commission-hosted online public inspection file (OPIF).

Given that information about the channel lineups of individual cable operators is now available through a variety of sources, including, in many cases, the websites of the operator, on-screen electronic program guides, and paper guides, this Notice of Proposed Rulemaking examines whether regulations regarding the provision of channel lineups remain necessary.

What the Notice Would Do:

- Propose to eliminate the requirement in Section 76.1705 that cable operators maintain at their local office a current listing of the cable television channels that each cable system delivers to its subscribers.
- Seek comment on whether we should also eliminate the requirement in Section 76.1700(a)(4) that certain cable operators make their channel lineup available via their OPIF.
- Seek comment on what the channel lineup requirements for small cable operators (those with 1,000 or fewer subscribers) should be if we eliminate Section 76.1705 or Section 76.1700(a)(4).

* This document is being released as part of a "permit-but-disclose" proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in MB Docket No. 18-92, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs/>). Before filing, participants should familiarize themselves with the Commission’s *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR § 1.1200 *et seq.*

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

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

NOTICE OF PROPOSED RULEMAKING*

Adopted: []

Released: []

By the Commission:

I. INTRODUCTION

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

* This document has been circulated for tentative consideration by the Commission at its April 2018 open meeting. The issues referenced in this document and the Commission’s ultimate resolutions of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairman has determined that, in the interest of promoting the public’s ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The Commission’s ex parte rules apply and presentations are subject to “permit-but-disclose” ex parte rules. See, e.g., 47 CFR §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR §§ 1.1200(a), 1.1203.

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

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

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

4 See infra note 18.

II. DISCUSSION

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

2. We propose to eliminate Section 76.1705 of our rules, which requires every cable operator “to maintain at its local office a current listing of the cable television channels” delivered by the system to its subscribers.⁵ This requirement was originally adopted in 1972 as part of the Commission’s technical standard performance rules for cable.⁶ Among the Commission’s goals in the *1972 Cable Order* was to ensure that the “channels delivered to subscribers conform to the capability of the television broadcast receiver.”⁷ While the Commission did not explain in its order exactly why it believed it was necessary for a system to maintain at its local office a list of the channels it delivers, it appears that the requirement was designed to help the Commission verify compliance with technical performance standards that applied to certain cable channels at that time.⁸

3. We tentatively conclude that the requirement to maintain a channel lineup locally is outdated, unnecessary, and inconsistent with the Commission’s recent efforts to improve access to information about regulated entities by making this information available online.⁹ Regardless of the original purpose of the rule, information about the channel lineups of individual cable operators is now available through other sources, including, in many cases, the websites of the operator, on-screen

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

⁶ *See Amendment of Part 74, Subpart K, of the Commission’s Rules and Regulations Relative to Community Antenna Television Systems, et al.*, Cable Television Report and Order, 36 FCC 2d 143, Appendix A (1972) (*1972 Cable Order*). ACA notes that, in the proceeding that led to the adoption of the *1972 Cable Order*, the Commission expressed its concern with service quality in the burgeoning cable industry which, as the Commission explained, was “rapidly evolving from its original role as a small, five-channel, reception service” toward “12-channel or larger systems” with “entry into large metropolitan centers.” *See* ACA Comments, MB Docket No. 17-105, at 14. *See also Amendment of Subpart K of Part 74 of the Commission’s Rules and Regulations with Respect to Technical Standards for Community Antenna Television Systems*, Notice of Proposed Rulemaking, 25 FCC 2d 38, 39, para. 5 (1970).

⁷ *1972 Cable Order*, 36 FCC 2d at 200, para. 155. At the time the *1972 Cable Order* was adopted, TV tuners were not capable of receiving all cable signals. Today, for the vast majority of TV subscribers, reception issues are addressed by set top boxes and cable QAM tuners in TV sets.

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

⁹ *See Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535 (2012) (“*Television Online Public File Order*”); *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Report and Order, 31 FCC Rcd 526 (2016) (“*Expanded Online Public File Order*”).

electronic program guides, paper guides, and the Commission-hosted online public inspection file (OPIF).¹⁰ We therefore believe that few, if any, consumers interested in channel lineup information currently access this information by visiting an operator's local office as other sources of channel lineup information can be viewed far more quickly and easily.¹¹

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

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

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

6. Several commenters in the Media Modernization proceeding have asked the Commission to eliminate the channel lineup public file requirement on the ground that consumers have multiple other sources of information about a cable system's current channel lineup, including cable operator and third-party websites, on-screen electronic programming guides, and copies of lineups provided by cable

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

¹¹ See *infra* para.7.

¹² See *supra* note 2.

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

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

¹⁵ *Id.* at 549, para. 60.

¹⁶ *Id.*

¹⁷ *Id.*

operators.¹⁸ NCTA argues that “[t]here is no indication in the record or elsewhere that consumers find the channel lineups in public inspection files to be useful at all, or that they would look to the Commission’s website to locate such information.”¹⁹ NCTA also notes that the Commission does not require channel lineup information to be included in the public files of DBS providers, who provide video programming options similar to cable operators.²⁰

7. We seek comment on whether there are sufficient other sources of information, apart from the online public file, available to consumers regarding cable channel lineups. In this regard, we note that Section 76.1602(b) of the Commission’s rules separately requires cable operators to provide information to subscribers regarding the “channel positions of programming carried on the system” and “products and services offered” at the time of installation, at least annually, and at any time upon request.²¹ Is this requirement, combined with other sources of information regarding a cable system’s channel lineup, sufficient to ensure that consumers have access to information regarding the programming provided by cable operators? Is there a benefit to having information about cable systems, including channel lineup information, available all in one place in the system’s online public file? How frequently do consumers use the online public file to access channel lineup information? How do consumers currently access the channel lineup information of DBS providers who are not subject to this online posting requirement? Is such information easily accessible?

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

C. Small Cable Operators

9. Operators of cable systems with fewer than 1,000 subscribers are exempt from all online

¹⁸ See Comments, MB Docket No. 17-105, of NCTA (July 5, 2017) at 27 and Verizon (July 5, 2017) at 7-8; Reply Comments, MB Docket No. 17-105, of Frontier at 4 and ITTA at 4.

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

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

²¹ 47 CFR § 76.1602(b)(1), (5). The provision states: “Effective July 1, 1993, the cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request: . . . (1) Products and services offered; . . . (5) Channel positions of programming carried on the system. . .” See also National Cable & Telecommunications Association and American Cable Association, Petition for Declaratory Ruling, Declaratory Ruling, 32 FCC Rcd 5269 (2017) (clarifying that the written information that cable operators must provide to their subscribers pursuant to Section 76.1602(b) of the Commission’s rules may be provided via electronic distribution).

²² 47 CFR § 76.1700(a)(4).

public file requirements, including the requirement to make channel lineup information available via the online file, but they must maintain local public inspection files and are subject to the requirement in Section 76.1705 that they maintain a copy of their current channel lineup locally.²³ If we eliminate Section 76.1705, as proposed above, will there continue to be adequate access to information about the channels delivered by these smaller cable systems? To what extent do small operators make channel lineup information available via the Internet or electronic programming guides? How often do consumers visit small operators' local inspection files to view channel lineups? Is Commission regulation in this area unnecessary because operators of small cable systems have the economic incentive to ensure that customers and prospective customers are able to find out which channels they deliver? We note that all cable systems regardless of size are subject to the notification requirements in Section 76.1602(b), discussed above. Alternatively, if we eliminate Section 76.1705 but retain the requirement that cable systems subject to the online public file make channel lineup information available there, should we require that cable systems with fewer than 1,000 subscribers continue to retain channel lineup information locally, if they do not voluntarily use the online public file?²⁴ Should we instead require small cable operators to put channel lineup information on their own website? If so, should small cable operators "maintain a current listing of the cable television channels which that systems delivers to its subscribers" on their website?²⁵

III. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Analysis

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

B. Initial Paperwork Reduction Act Analysis

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

C. Ex Parte Presentations

12. Permit-But-Disclose. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.²⁷ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex*

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

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

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

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

²⁷ 47 CFR §§ 1.1200 *et seq.*

parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

D. Comment Filing Procedures

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

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

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

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

E. Additional Information

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

IV. ORDERING CLAUSES

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

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Proposed Rules

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

PART 76 – MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

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

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

2. Section 76.1700 is amended by revising paragraph (a)(4) to read as follows:

§ 76.1700 Records to be maintained by cable system operators

(a) * * *

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

* * * * *

3. Section 76.1705 is removed and reserved.

APPENDIX B

Initial Regulatory Flexibility Act Analysis

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

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

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

3. Operators of cable systems with fewer than 1,000 subscribers are exempt from all online public file requirements, including the requirement to make channel lineup information available via the online file, but they must maintain local public inspection files and are subject to the requirement in Section 76.1705 that they maintain a copy of their current channel lineup locally.⁷ The *NPRM* asks whether, if we eliminate Section 76.1705, there will continue to be adequate access to channel lineup information for systems with fewer than 1,000 subscribers, or whether we should instead continue to require these small operators to maintain current channel lineup information in their local public inspection files if they do not voluntarily use the online public file. The *NPRM* also asks if we should instead require small cable operators to put channel lineup information on their own website and, if so, we should require these operators to “maintain a current listing of the cable television channels which that system delivers to its subscribers” on their website. Our goal is to ensure that consumers have sufficient access to channel lineup information and to continue our efforts to modernize our rules and reduce

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ See 47 CFR § 76.1705.

⁵ See 47 CFR § 76.1700(a)(4) (requiring that cable operators of systems with 1,000 or more subscribers maintain in the online public file “a current listing of the cable television channels which that system delivers to its subscribers in accordance with § 76.1705.”).

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

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

regulatory burdens on cable operators by eliminating unnecessary requirements in our rules.

B. Legal Basis

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

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

5. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁸ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹⁰ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹¹ Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

6. *Cable Companies and Systems (Rate Regulation Standard).* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers nationwide.¹² Industry data shows that, of 1,076 cable operators nationwide, all but 11 are small under this size standard.¹³ In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers.¹⁴ Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000-19,999 subscribers.¹⁵ Thus, under this second size standard, the Commission believes that most cable systems are small.

7. *Cable System Operators.* The Act 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

⁸ 5 U.S.C. § 603(b)(3).

⁹ 5 U.S.C. § 601(6).

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

¹¹ 15 U.S.C. § 632.

¹² 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the Cable Television Consumer Protection And Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, MM Docket No. 93-215, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408, ¶ 28 (1995).

¹³ These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, “Top 25 Cable/Satellite Operators,” pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, “Ownership of Cable Systems in the United States,” pages D-1805 to D-1857.

¹⁴ 47 C.F.R. § 76.901(c).

¹⁵ Warren Communications News, *Television & Cable Factbook 2008*, “U.S. Cable Systems by Subscriber Size,” page F-2 (data current as of Oct. 2007). The data do not include 851 systems for which classifying data were not available.

than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”¹⁶ The Commission has determined that an operator serving fewer than 677,000 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.¹⁷ Industry data indicate that, of 1,076 cable operators nationwide, all but 10 are small under this size standard.¹⁸ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,¹⁹ and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

8. *Open Video Services.* Open Video Service (OVS) systems provide subscription services.²⁰ The open video system framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.²¹ The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,²² OVS falls within the SBA small business size standard covering cable services, which is “Wired Telecommunications Carriers.”²³ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.²⁴ To gauge small business prevalence for the OVS service, the Commission relies on data currently available from the U.S. Census for the year 2012. According to that source, there were 3,117 firms that in 2012 were Wired Telecommunications Carriers. Of these, 3,059 operated with less than 1,000 employees. Based on this data, the majority of these firms can be considered small.²⁵ In addition, we note that the Commission has certified some OVS operators, with some now providing service.²⁶ Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS franchises.²⁷ The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities. The Commission further notes

¹⁶ 47 U.S.C. § 543(m)(2); *see* 47 C.F.R. § 76.901(f) & nn. 1-3.

¹⁷ 47 CFR § 76.901(f); *see FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (Cable Services Bureau 2001).

¹⁸ These data are derived from R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, “Top 25 Cable/Satellite Operators,” pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, “Ownership of Cable Systems in the United States,” pages D-1805 to D-1857.

¹⁹ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission’s rules. *See* 47 C.F.R. § 76.901(f).

²⁰ *See* 47 U.S.C. § 573.

²¹ 47 U.S.C. § 571(a)(3)-(4). *See 13th Annual Report*, 24 FCC Rcd at 606, para. 135.

²² *See* 47 U.S.C. § 573.

²³ U.S. Census Bureau, 2012 NAICS Definitions, 517110 Wired Telecommunications Carriers, <http://www.census.gov/naics/2012/def/ND517110.HTM#N517110>.

²⁴ 13 CFR § 201.121, NAICS code 517110 (2012).

²⁵ *See* U.S. Census Bureau, Table EC1251SSSZ5, <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t#none>.

²⁶ A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovscer.html>.

²⁷ *See 13th Annual Report*, 24 FCC Rcd at 606-07 para. 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

that it has certified approximately 45 OVS operators to serve 116 areas, and some of these are currently providing service.²⁸ Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

9. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA's broad economic census category, "Wired Telecommunications Carriers,"²⁹ which was developed for small wireline firms.³⁰ Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.³¹ Census data for 2012 indicate that in that year there were 3,117 firms operating businesses as wired telecommunications carriers. Of that 3,117, 3,059 operated with 999 or fewer employees. Based on this data, we estimate that a majority of operators of SMATV/PCO companies were small under the applicable SBA size standard.³²

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

10. The rule change proposed in the *NPRM* would reduce reporting, recordkeeping, and other compliance requirements for cable operators which are currently required to maintain a current channel lineup for each system in the cable operator's local office. The *NPRM* proposes to eliminate this requirement, which is outdated and unnecessary, thereby reducing recordkeeping burdens on these entities. In addition, the *NPRM* seeks comment on whether to eliminate the requirement that cable systems with 1,000 or more subscribers make a current copy of their channel lineup available via their online public inspection file. If the Commission eliminated this requirement, it would further reduce reporting, recordkeeping, and other compliance requirements for these cable operators.

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

²⁸ See <http://www.fcc.gov/encyclopedia/current-filings-certification-open-video-systems> (current as of July 2012).

²⁹ See 13 CFR § 121.201, NAICS code 517110 (2012).

³⁰ Although SMATV systems often use DBS video programming as part of their service package to subscribers, they are not included in Section 340's definition of "satellite carrier." See 47 U.S.C. §§ 340(i)(1) and 338(k)(3); 17 U.S.C. § 119(d)(6).

³¹ 13 CFR § 121.201, NAICS code 517110 (2012).

³² U.S. Census Bureau, Table EC1251SSSZ5, <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t#none>.

“maintain a current listing of the cable television channels which that systems delivers to its subscribers” on their website.

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

12. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standard; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.³³

13. The *NPRM* proposes to eliminate the requirement that cable operators maintain a current channel lineup in the cable operator’s local office, and invites comment on this proposal and whether there are reasons why this requirement should be retained. In addition, the *NPRM* invites comment on whether to eliminate the requirement that cable systems with 1,000 or more subscribers make a current copy of their channel lineup available via their online public inspection file, or whether this requirement should be retained to ensure that consumers have sufficient access to channel lineup information

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

14. None.

³³ 5 U.S.C. § 603(c).