

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matters of)	
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Channel Lineup Requirements – Sections 76.1705 and 76.1700(a)(4))	MB Docket No. 18-92
)	
Modernization of Media Regulation Initiative)	MB Docket No. 17-105
)	
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**REPLY COMMENTS OF
ITTA – THE VOICE OF AMERICA’S BROADBAND PROVIDERS**

ITTA – The Voice of America’s Broadband Providers (ITTA) hereby submits its reply to comments filed in response to the Commission’s Notice of Proposed Rulemaking proposing to eliminate Section 76.1705 of the Commission’s rules and seeking comment on whether to also eliminate Section 76.1700(a)(4) of the Commission’s rules.¹ In a reply to the original comments filed in the Commission’s Modernization of Media Regulation Initiative proceeding, ITTA supported elimination of both rules.² ITTA reiterates its support for those outcomes here.

I. NO COMMENTER OPPOSES ELIMINATION OF SECTION 76.1705, AND THE COMMISSION SHOULD DO SO

Section 76.1705 of the Commission’s rules requires that cable operators maintain at their local office a current listing of the cable television channels that the cable system delivers to its subscribers. The *NPRM* tentatively concludes that Section 76.1705 is unnecessary and outdated,

¹*Channel Lineup Requirements – Sections 76.1705 and 76.1700(a)(4); Modernization of Media Regulation Initiative*, Notice of Proposed Rulemaking, FCC 18-47 (Apr. 17, 2018) (*NPRM*); 47 CFR §§ 76.1700(a)(4), 76.1705.

² See ITTA Reply, MB Docket Nos. 17-105, 14-127, 12-217, and 02-144, at 4 (Aug. 4, 2017) (ITTA Aug. 4, 2017 Reply).

and proposes to eliminate it.³ No commenter opposes the Commission’s tentative conclusion or its proposal to act on it. The Commission should do so.

As NCTA aptly summarizes, Section 76.1705 “is a relic of the Commission’s earliest cable technical standards, and has long outlived its usefulness.”⁴ Buttressing the *NPRM*’s tentative conclusion “[r]egardless of the original purpose of the rule” is its observation that information about the channel lineups of individual cable operators is now available through myriad other sources.⁵ And because consumers can view channel lineup information “far more quickly and easily” via these other sources, the Commission correctly expresses that “few, if any, consumers interested in channel lineup information currently access this information by visiting an operator’s local office.”⁶

ITTA also agrees with commenters that suggest cable operators have the economic incentive to ensure that customers and prospective customers are able to find out which channels the cable systems deliver.⁷ As ACA asserts, it is because of such incentives that, without a regulatory mandate, cable operators make channel lineups available to the public through myriad other sources designed to disseminate the information as widely as possible.⁸ ACA astutely elaborates that cable operators also lack any incentive to withhold channel lineup information,

³ See *NPRM* at 1-3, paras. 1-4.

⁴ NCTA Comments at 2; see also *NPRM* at 2, paras. 2-3 (recounting background of Section 76.1705 – including the Commission’s lack of explanation for why it was adopted -- and tentatively concluding that it is outdated and unnecessary).

⁵ *NPRM* at 2, para. 3. See NCTA Comments at 2 (“Customers and regulators have many means of accessing this information today.”); ACA Comments at 3.

⁶ *NPRM* at 2-3, para. 3. See NATOA Comments at 2; NCTA Comments at 2; ACA Comments at 3.

⁷ See NCTA Comments at 2; ACA Comments at 2-3. See also *NPRM* at 3, para. 4 (seeking comment on economic incentives to ensure customers and prospective customers have a system’s channel lineup information).

⁸ See ACA Comments at 2-3.

because they are well aware that not making this information easily available “will almost certainly mean the loss of potential and existing customers,” insofar as customers know that they can choose from multiple MVPDs and are unlikely to purchase or retain a video product without being able to determine that it includes the channels they want.⁹

Furthermore, cable operators have a particular incentive to make their channel listings available electronically -- as almost all of them do¹⁰ -- because the dynamic nature of channel lineups combined with printing costs add up quickly when cable operators are required to maintain an extensive inventory of printed lists. Eliminating the requirement to maintain such lists at the local office will help to alleviate these costs. Combined with the reality that few consumers currently access this information by visiting an operator’s local office, there are essentially no realistic benefits to retaining Section 76.1705 to counteract the costs of doing so.¹¹

II. THE COMMISSION SHOULD HEED COMMENTERS WHO LIKEWISE ADVOCATE FOR ELIMINATION OF SECTION 76.1700(a)(4)

Section 76.1700(a)(4) of the Commission’s rules requires that cable systems with at least 1,000 subscribers maintain in the Commission’s online public file a current listing of channels which that system delivers to its subscribers in accordance with Section 76.1705. The *NPRM* invites comment on whether the Commission should eliminate this requirement too. ITTA concurs with commenters that urge the Commission to do so.

The same factors that warrant the Commission’s elimination of Section 76.1705 undergird its elimination of Section 76.1700(a)(4). Channel lineups of individual cable operators

⁹ *Id.* at 2.

¹⁰ *See infra* at 6.

¹¹ *See NPRM* at 3, para. 4 (commenters should address whether the benefits of retaining the rule outweigh the costs).

are available through numerous other sources.¹² And this is due to the economic incentive that cable operators have to ensure that customers and prospective customers are able to find out which channels the cable systems deliver.¹³

In addition, as NCTA keenly observes, most of the other options for obtaining this information “are far more convenient than accessing the information by searching the Commission’s online public file system.”¹⁴ ITTA further agrees with NCTA that “it is unlikely that customers seeking information about channel lineups for their specific cable system would look for such information on the FCC website,” leading to the result that Section 76.1700(a)(4) “does not benefit consumers.”¹⁵ As ITTA has contended previously, even in its current online format, the cable public file is simply not a resource that consumers utilize.¹⁶

Commissioner O’Rielly adroitly coalesced all of these considerations in addressing the *NPRM*’s seeking comment on eliminating Section 76.1700(a)(4):

[A]s this information is available elsewhere, this seems like another important reform. The item asks if Commission regulation in this area is unnecessary

¹² See NCTA Comments at 3; ACA Comments at 3. See also *NPRM* at 4, paras. 7, 8 (seeking comment on whether there are sufficient other sources of cable channel lineups available to consumers aside from via the online public file).

¹³ See ACA Comments at 3; NATOA Comments at 3 (acknowledging there may be an economic incentive for cable operators to ensure customers and prospective customers can access channel lineups). See also *NPRM* at 4, para. 8 (seeking comment on whether Commission regulation in this area is unnecessary because cable operators have the economic incentive to ensure that customers and prospective customers are able to find out which channels they deliver).

¹⁴ NCTA Comments at 3.

¹⁵ *Id.*; accord ACA Comments at 3 (it is unlikely that eliminating Section 76.1700(a)(4) will cause any harm, as consumers almost certainly look first to alternative sources, “which are more convenient and easier to access” than the online public file). See also *NPRM* at 4, para. 7 (seeking comment on how frequently consumers use the online public file to access channel lineup information).

¹⁶ See ITTA Aug. 4, 2017 Reply at 3. There, ITTA also noted Verizon’s assertion that its public file has received about five visits per year since it introduced FIOS video service in 2005, as well as the statement of one ITTA member that “[i]n my entire career in [this] industry, I do not recall a single occasion when a member of the public requested information from the public files.” *Id.* at n.5.

because cable operators have the economic incentive to ensure that both current and prospective customers are able to find out which channels are available. The answer to this is a resounding yes! In fact . . . there is no evidence that consumers find this information in the public file useful.¹⁷

The Commission should follow this reasoning and abandon Section 76.1700(a)(4).¹⁸

III. THE COMMISSION SHOULD NOT IMPOSE NEW CHANNEL LINEUP INFORMATION PROVISION REQUIREMENTS UPON CABLE SYSTEMS WITH FEWER THAN 1,000 SUBSCRIBERS

The *NPRM* seeks comment on whether there will continue to be adequate access to information about the channels delivered by smaller cable systems, i.e., those with fewer than 1,000 subscribers, if the Commission eliminates Section 76.1705.¹⁹ Again for the same reasons that the Commission should eliminate Section 76.1705, it should not retain the rule in any form only for smaller cable operators.²⁰ As ACA argues, smaller cable systems “face the same

¹⁷ *NPRM* at 15, Statement of Commissioner Michael O’Rielly (Commissioner O’Rielly *NPRM* Statement).

¹⁸ The objections of the Alliance for Community Media (ACM) and NAB to the elimination of Section 76.1700(a)(4) are of no moment. *See* ACM Comments at 1-4; NAB Comments at 2-4. In asserting that the rule must be retained because other sources of channel lineup information are inadequate, both disregard the fact that cable operators already may satisfy Section 76.1700(a)(4)’s requirements by providing a link in the online file to the channel lineup maintained by the operator at another online location. *See NPRM* at 3, para. 5 (citing *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, 549, para. 60 (2016)). Therefore, to now suggest that posting of channel lineup information on another website is insufficient is essentially to advocate that the Commission bolster the requirements of Section 76.1700(a)(4). Not only does this suggestion head in the wrong direction in a proceeding intended to eliminate or modify regulations that are outdated, unnecessary, or unduly burdensome, *see NPRM* at 1, para. 1 n.3, there is also no foundation for it as nowhere does the *NPRM* seek comment on how to *increase* the scope of Section 76.1700(a)(4) relative to cable systems with 1,000 or more subscribers. Similarly, the Commission should disregard NATOA’s request that the Commission add a requirement to Section 76.1700(a)(4) that cable operators retain in the online public file histories of their channel lineups over a reasonable period of time. *See* NATOA Comments at 3-4; *but see* 47 CFR § 76.1700(a)(4) (requiring that cable operators maintain a “current” listing of channels).

¹⁹ *See NPRM* at 4-5, para. 9.

²⁰ The *NPRM* seeks comment on whether it should retain Section 76.1705 for smaller cable systems if they do not voluntarily use the online public file. *See id.* at 5, para. 9. Not only does ITTA oppose the tacitly suggested alternative of requiring online public file posting, as discussed

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competitive pressures as larger systems, and so have the same incentives to make access to channel lineup information as easy as possible.”²¹ Notably, ACA also reports the results of a survey of over 250 of its smaller operator members, which demonstrated that of the fewer than four percent that do not maintain a company website or post channel lineups on their website, “the information is made available in a variety of alternative ways, including online on independent websites.”²² The sentiments of Commissioner O’Rielly are again instructive in this regard: “As the Commission has recognized in other circumstances, smaller entities need more of a reprieve from our rules, not less.”²³ The Commission should refrain from adopting any channel lineup information provision requirement specifically applicable to smaller cable operators.

IV. CONCLUSION

Cable operators of all sizes have the economic incentive to make their channel lineups publicly available. As a result, there are myriad sources of channel lineup information beyond lists maintained at the local office or in the online public inspection file, neither of which consumers are prone to consult. For these reasons, in a proceeding designed to eliminate or

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below, smaller cable operators sufficiently make channel lineup information available via other sources.

²¹ ACA Comments at 4.

²² *Id.* at 3-4 n.10; *see NPRM* at 5, para. 9 (seeking comment on the extent to which small operators make channel lineup information available via the Internet or electronic programming guides).

²³ Commissioner O’Rielly *NPRM* Statement.

modify rules that are outdated, unnecessary, or unduly burdensome, Sections 76.1700(a)(4) and 76.1705 are prime candidates for retirement. The Commission should do so.

Respectfully submitted,

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