

**Section 76.975, Commercial Leased Access Dispute Resolution**

**SUPPORTING STATEMENT**

**A. Justification:**

1. 47 CFR Section 76.975 permits any person aggrieved by the failure or refusal of a cable operator to make commercial channel capacity available or to charge rates for such capacity in accordance with the provisions of Title VI of the Communications Act of 1934 may file a petition for relief with the Commission.

The Commission is requesting an extension of this information collection in order to receive the full three year approval from OMB.

As noted on the OMB Form 83-I, this information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

Statutory authority for the collection of information is contained in Sections 154(i) and 612 of the Communications Act of 1934, as amended.

2. The information is used by leased access programmers and is reviewed by the Commission to resolve leased access disputes.

3. We do not believe that the use of information technology is feasible in this situation.

4. This agency does not impose a similar information collection on the respondents. There are no similar data available.

5. This collection of information will not have a significant economic impact on a substantial number of small entities/businesses due to them being exempt from the Commission's leased access provisions.

6. Pursuant to Section 612 of the 1992 Cable Act, the Commission is responsible for promoting diversity of programming and competition in programming delivery. If this information collection requirement were not conducted, the Commission would be in jeopardy of not accomplishing that task.

7. 47 CFR Section 76.975 requires that if parties cannot agree on a mutually acceptable accountant within five business days of the programmer's request for a review, they must each select an independent accountant on the sixth business day. These two accountants will then have five business days to select a third independent accountant to perform the review. To account for their more limited resources, operators of systems entitled to small system relief

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have

14 business days to select an independent accountant when no agreement can be reached.

8. The Commission published a Notice (74 FR 6409) in the *Federal Register* on February 9, 2009. No comments were generated as result of this Notice.

9. Respondents will not receive any payments.

10. There is no need for confidentiality with this collection of information.

11. This collection of information does not address any matters of a sensitive nature.

12. The Commission estimates the public burden as follows:

**Total Number of Annual Respondents:**

30 accountant reviewers  
15 petitioners  
15 respondents to petitions  
**60 respondents**

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15 petitions  
15 responses to petitions  
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47 CFR Section 76.975 requires that persons alleging that a cable operator's leased access rate is unreasonable must receive a determination of the cable operator's maximum permitted rate from an independent accountant prior to filing a petition for relief with the Commission.

We estimate that operators will undergo an average burden of 4 hours to arrange for an independent accountant review and coordinate rate information with the selected accountant. This average burden accounts for those instances where parties that cannot agree on a mutually acceptable accountant must each select an independent accountant who in turn selects a third independent accountant. Nationwide, we estimate a need for 30 accountant leased access rate reviews per year:

30 accountant leased access rate reviews/coordination performed by cable operators x 4

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hrs./review/coordination = **120 hours**

We estimate that approximately 15 petitions for relief under 47 CFR Section 76.975 are filed annually with the Commission. Each petition filed also will most likely result in a response being filed by the defendant party. Each petition and response is estimated to have an average burden of 40 hours to complete. We estimate all petitions and responses will be handled by in-house legal staff.

15 petitions drafted by in-house counsel x 40 hours/petition = 600 hours  
15 responses drafted by in-house counsel x 40 hours/response = 600 hours  
**1,200 hours**

**Total Annual Burden to Hours:** 120 hours + 1,200 hours = **1,320 hours**

**Annual “In-house cost”:** We estimate the respondent would have an average salary of \$100,000/year (\$48.08/hour).

30 accountant leased access rate reviews/coordination performed by cable operators x 4 hrs./review/coordination x 48.08 = \$5,769.60

30 petitions/responses (15 petitions + 15 responses) x 40 hrs/petition x \$48.08/hours = \$57,696.00

**Total Annual “In-house cost”:** \$5,769.60 + \$57,696.00 = **63,465.60**

These estimates are based on FCC staff's knowledge and familiarity with the data required.

13. a) **Total capital and start-up costs:** None

b) **Total operation and maintenance costs:** The cost for each accountant review of leased access rates is estimated at 30 reviews x 8 hours per review x \$100 per hour = **\$24,000**

c) **Total annualized cost requested:** **\$24,000**

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14. **Cost to the Federal Government:** Leased Access petitions estimated to be filed under 47 CFR Section 76.975: The FCC will review an estimated 15 petitions per year. The Commission will use professional staff at the GS-13/Step 5; managerial staff at the GS-14/Step 5; and clerical staff at the GS-5/Step 5 levels to review and process these petitions and responses to the petitions:

	Hours p/Case	Cost p/Hour	Cost p/Case
Professional	38 hours	\$47.21	\$1,793.98
Managerial	1 hour	\$55.78	\$ 55.78
Clerical	<u>1 hour</u>	\$18.07	<u>\$ 18.07</u>
Totals	40.0 hours		\$1,867.83

$\$1,867.83 \times 30 \text{ cases (15 petitions/15 responses to the petitions)} = \$56,034.90$   
**TOTAL COST TO THE FEDERAL GOVERNMENT: \$56,034.90**

15. There are no program changes or adjustments to this information collection.

16. The data will not be published for statistical use.

17. We do not seek approval to not display the expiration date for OMB approval of the information collection.

18. There are no exceptions to the Certification Statement.

**B. Collections of Information Employing Statistical Methods:**

No statistical methods are employed.