

**2009 Sections 76.970, 76.971 and 76.975, Commercial Leased Access Rates, Terms and Conditions**

**SUPPORTING STATEMENT**

**A. Justification**

1. **47 CFR Section 76.970(h)** requires cable operators to provide the following information within 15 calendar days of a request regarding leased access (for systems subject to small system relief, cable operators are required to provide the following information within 30 days of a request regarding leased access):

- (a) a complete schedule of the operator's full-time and part-time leased access rates;
- (b) how much of the cable operator's leased access set-aside capacity is available;
- (c) rates associated with technical and studio costs;
- (d) if specifically requested, a sample leased access contract; and
- (e) operators must maintain supporting documentation to justify scheduled rates in their files.

**47 CFR Section 76.971** requires cable operators to provide billing and collection services to leased access programmers unless they can demonstrate the existence of third party billing and collection services which, in terms of cost and accessibility, offer leased access programmers an alternative substantially equivalent to that offered to comparable non-leased access programmers.

**47 CFR Section 76.975(b)** 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.

**47 CFR Section 76.975(c)** requires that petitioners attach a copy of the final accountant's report to their petition where the petition is based on allegations that a cable operator's leased access rates are unreasonable.

On February 4, 1997, the Commission released a Second Report and Order and Second Order on Reconsideration of the First Report and Order ("Order"), *In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Leased Commercial Access*, CS Docket No. 96-60, FCC 97-27, regarding implementation of the leased commercial access provisions of the 1992 Cable Act. The Order addressed comments and petitions for reconsideration filed in response to the Order on Reconsideration of the First Report and Order and Further Notice of Proposed Rulemaking in CS Docket 96-60, FCC 96-122 (released March 29, 1996). The Order:

- (a) revised the maximum rate formulas for use of full-time leased access channels;

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- (b) declined to impose a transition period for the implementation of the revised rate formulas;
- (c) maintained the current rules for maximum part-time rates and adopted a rule that cable operators are not required to open additional leased access channels for part-time use until all existing part-time leased access channels are substantially filled or until a programmer requests a year-long eight-hour daily time slot that cannot otherwise be accommodated;
- (d) allowed the resale of leased access time;
- (e) granted leased access programmers the right to demand access to a tier with a subscriber penetration of more than 50%;
- (f) stipulated that minority and educational programming does not qualify as a substitute for leased access programming unless it is carried on a tier with a subscriber penetration of more than 50%;
- (g) declined to mandate preferential treatment for certain types of leased access programmers;
- (h) required operators to accept leased access programmers on a non-discriminatory basis so long as available leased access capacity exceeds demand;
- (i) required that an independent accountant review an operator's rate calculations prior to the filing of a rate complaint with the Commission;
- (j) established a standard of reasonableness for certain contractual requirements;
- (k) specified when leased access programmers must pay for technical support; and
- (l) defined the term "affiliate" for purposes of leased access.

The *Order* also addressed several issues on reconsideration, including the exclusion of programming revenues from the maximum rate calculation, the maximum rate calculation for a la carte channels, cable operators' obligations to provide certain information to potential leased access programmers and the need for operators to comply with those obligations, time increments, the calculation of the leased access set-aside requirement, and billing and collection services.

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

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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 data is used by prospective leased access programmers and the Commission to verify rate calculations for leased access channels and to eliminate uncertainty in negotiations for leased commercial access. The Commission's leased access requirements are designed to promote diversity of programming and competition in programming delivery as required by Section 612 of the Cable Television Consumer Protection and Competition Act of 1992.

3. Use of information technology is not 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 small entities/businesses being exempt of all 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 these information collection requirements were not conducted, the Commission would be in jeopardy of not accomplishing that task.

7. The Commission requires cable operators to provide the following information within 15 calendar days of a request regarding leased access: (a) a complete schedule of the operator's full-time and part-time leased access rates; (b) how much of the cable operator's leased access set-aside capacity is available, (c) rates associated with technical and studio costs; and (d) if specifically requested, a sample leased access contract. Operators of small cable systems with 36 or more channels are allowed 30 days to provide the information listed above.

Regarding rate disputes, we require 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 have

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

8. The Commission published a Notice (74 FR 6624) in the *Federal Register* on February 10, 2009. No comments were generated as a result of this Notice.

9. Respondents will not receive any payments.

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

11. These collections of information do not address any matters of a sensitive nature.

12. Currently, there are approximately 7,219 cable systems, of which approximately 45% (3,249) have channel capacities of less than 36 channels, and are therefore exempt of the Commission's leased access provisions. Therefore, number of cable system not exempt from the Commission's leased access provisions/rules is 3,970 operators (55% of 7,219 cable systems). The Commission calculated the burden on the public/respondent as follows:

<b>RESPONSES &amp; SERVICE(s)</b>	<b>RESPONDENT'S HOURLY BURDEN</b>	<b>ANNUAL BURDEN HOURS</b>	<b>Respondent's Hourly Wage</b>	<b>Annual In-house Cost</b>
<b><i>Maximum Permitted Rates</i></b>				
3,970 cable operators	4 hours/system	15,880 hours	\$48.08/hour	\$ 763,510.40
<b><i>Gathering, maintaining and disclosing permitted rate information</i></b>				
3,970 cable operators	10 hours/system	39,700 hours	\$48.08/hour	\$1,908,776.00
<b><i>Third party billing</i></b>				
3,970 cable operators	1 hour/system	3,970 hours	\$48.08/hour	\$ 190,877.60
<b><i>Accountant Leased Access Reviews</i></b>				
30 cable operators	4 hours/review <sup>1</sup>	120 hours	\$48.08/hour	\$ 5,769.60
<b><i>Petitions for Relief</i></b>				

<sup>1</sup> Cable operators will coordinate rate information with accountants to allow the accountant to complete leased access rate reviews.

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30 petitioners	2 minutes/report (.034 hours)	1 hour	\$48.08/hour	\$ 48.08
<b>TOTALS:</b> <b>11,970 responses</b>		<b>59,671 hours</b>		<b>\$2,868,981.60</b>

These calculations were arrived based on the following information/data:

\*The average annual burden of calculating maximum permitted rates is estimated to be 4 hours per cable system for each type of leased access rate calculations, including the average implicit fee for full-time channel placement, the highest implicit fee for full-time channel placement as an a la carte service, and for any part-time channel placement.

\*We estimate that each operator will undergo an average burden of 10 hours per year to gather this information, maintain it, and disclose it to requesting potential leased access programmers.

\*The Commission estimates that identification of a third party billing and collection service rarely needs to occur, because the vast majority of leased access programming is placed on a program services tier and is billed as part of that tier. Nonetheless, the Commission estimates an average burden of no more than 1 hour per cable system operator to identify a third party billing and collection service and then make the necessary information available:

\*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.

\*We estimate that petitioners will undergo an average burden of 2 minutes to attach such reports. Nationwide, we estimate that petitioners will need to attach a total of no more than 30 accountant's reports when filing petitions for relief.

**Total number of respondents:**

3,970 operators

30 operators coordinating information with accountant for accountant reviews

30 petitioners involved in the leased access rate dispute process

**4,030 (respondents)**

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**Total number of responses:**

3,970	Maximum Permitted Rate Document
3,970	Permitted Rate Information
3,970	Third Party Billing
30	Accountant Determination
<u>30</u>	Petitions for Relief
<b>11,970</b>	<b>(responses)</b>

**Total annual burden hours: 59,671 hours**

**Total Annual "In-house cost": \$2,868,981.60**

13. a. **Total capital and start-up costs:** We estimate the annual costs incurred by cable operators for leased access for sending out leased access information to prospective programmers, for identifying third party billing collection services, and for selecting accountants to be an aggregate of \$50,000 for the total number of respondents.

**\$50,000**

b. **Total operation and maintenance costs:** We estimate that accountants will undergo an average burden of 8 hours to review an operator's maximum rate calculations and to prepare the required report. Accountants are estimated to be paid \$100 per hour for their services:

30 accountant reviews x 8 hours per review x \$100 per hour = **\$24,000**

c. **Total annual cost: \$50,000 + \$24,000 = \$74,000**

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14. There is no cost to the federal government.

15. There is an adjustment of -15 hours to the annual burden hours which is due to a decrease in the number of respondents to this information collection. There also is a +\$6 to the total annual cost which is due to rounding issues in ROCIS. There are no program changes to this collection.

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

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

18. The Commission published a *Notice* (74 FR 6624) in the *Federal Register* on February 10, 2009 seeking comments from the public for the information collection requirements contained in this supporting statement. In the *Notice*, the Commission stated the total number of responses as 11,940. We correct that number to read 11,970. There are no other exceptions to the Certification Statement.

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

No statistical methods are employed.