

OMB Control Number: 3060-0568
September 2019 Sections 76.970, 76.971 and 76.975, Commercial Leased Access Rates, Terms and Conditions, and Dispute Resolution

SUPPORTING STATEMENT

A. Justification

1. On June 7, 2019, the Commission released a Report and Order and Second Further Notice of Proposed Rulemaking (Report and Order and Second FNPRM), *In the Matter of Leased Commercial Access; Modernization of Media Regulation Initiative*, MB Docket Nos. 07-42 and 17-105, FCC 19-52. The Report and Order first vacates the Commission's 2008 leased access order, 23 FCC Rcd 2909, which never went into effect. Second, the Report and Order adopts certain updates and improvements to the Commission's existing leased access rules. The rule changes that are relevant to this information collection are changes to sections 76.970(h) and 76.975(e), which are reflected in the discussion below.¹

47 CFR section 76.970(h) requires cable operators to provide prospective leased access programmers with the following information within 30 calendar days of the date on which a bona fide request for leased access information is made, provided that the programmer has remitted any application fee that the cable system operator requires up to a maximum of \$100 per system-specific bona fide request (for systems subject to small system relief, cable operators are required to provide the following information within 45 calendar days of a bona fide request):

- (a) how much of the cable operator's leased access set-aside capacity is available;
- (b) a complete schedule of the operator's full-time leased access rates;
- (c) rates associated with technical and studio costs; and
- (d) if specifically requested, a sample leased access contract.

Bona fide requests, as used in this section, are defined as requests from potential leased access programmers that have provided the following information:

- (a) the desired length of a contract term;
- (b) the anticipated commencement date for carriage; and
- (c) the nature of the programming.

All requests for leased access must be made in writing and must specify the date on which the request was sent to the operator. Operators must maintain supporting documentation to justify

¹ In preparing this Supporting Statement, Commission staff determined that OMB Control Number 3060-0569 is in part redundant with this OMB Control Number 3060-0568. Accordingly, herein we are consolidating the information collections under OMB Control Number 3060-0568, and once OMB approves the consolidated collection we intend to discontinue OMB Control Number 3060-0569.

OMB Control Number: 3060-0568
September 2019 Sections 76.970, 76.971 and 76.975, Commercial Leased Access Rates, Terms and Conditions, and Dispute Resolution

scheduled rates, including supporting contracts, calculations of the implicit fees, and justifications for all adjustments.

Cable system operators must disclose on their own websites, or through alternate means if they do not have their own websites, a contact name or title, telephone number, and email address for the person responsible for responding to requests for information about leased access channels.

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) allows 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 relevant provisions of the statute or the implementing regulations to file a petition for relief with the Commission. 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. 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 14 business days to select an independent accountant when no agreement can be reached.

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.

47 CFR section 76.975(e) provides that the cable operator or other respondent will have 30 days from service of the petition to file an answer. If a leased access rate is disputed, the answer must show that the rate charged is not higher than the maximum permitted rate for such leased access, and must be supported by the affidavit of a responsible company official. If, after an answer is submitted, the staff finds a prima facie violation of our rules, the staff may require a respondent to produce additional information, or specify other procedures necessary for resolution of the proceeding. Replies to answers must be filed within fifteen (15) days after submission of the answer.

OMB Control Number: 3060-0568
September 2019 Sections 76.970, 76.971 and 76.975, Commercial Leased Access Rates, Terms and Conditions, and Dispute Resolution

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 4(i), 303, and 612 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303, and 532.

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 information also fosters the process of making and responding to leased access requests, and it is necessary for the Commission's commercial leased access dispute resolution process. 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. Cable system operators must disclose on their own websites the required contact information for the person responsible for responding to leased access requests for information, and if the operator does not have a website it may use alternate means.

4. No other agency imposes similar information collections on the respondents. There are no similar data available.

5. In conformance with the Paperwork Reduction Act of 1995, the Commission is making an effort to minimize the information collection burden for small business concerns, including those with fewer than 25 employees. For example, cable system operators of systems subject to small system relief will retain a longer deadline (45 calendar days) for responding to leased access requests for information than the deadline applicable to other cable system operators (30 calendar days). Similarly, as stated above, in adopting a contact information requirement, the Commission permits cable system operators to disclose the contact information either on their own websites, or through alternate means if they do not have their own websites.

6. Pursuant to section 612 of the Communications Act of 1934, as amended by 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 collections are not being conducted in any manner inconsistent with 5 CFR part 1320.

8. The Commission published a notice (84 FR 35115) in the *Federal Register* on July 22, 2019

OMB Control Number: 3060-0568
September 2019 Sections 76.970, 76.971 and 76.975, Commercial Leased Access Rates, Terms and Conditions, and Dispute Resolution

seeking comment from the public on the information collection requirements contained in this supporting statement. We have not received any comments from the public on the information collection requirements contained in this collection.

9. Respondents will not receive any payments or gifts.
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. The Commission estimates the hour burdens for the collection of information as follows:

(a) Bona fide leased access requests.

The Commission estimates that **250 leased access programmers** will each send an average of 4 bona fide leased access requests to cable system operators per year.

250 leased access programmers x 4 bona fide leased access requests = **1,000 annual bona fide leased access requests**

The Commission estimates that the average burden on a leased access programmer to prepare and send each bona fide leased access request will require approximately 1 hour. The Commission estimates that 100 percent of the bona fide leased access requests that programmers prepare and send will be prepared “in house” using the programmer’s staff.

1,000 bona fide leased access requests x 1 hour per request = **1,000 hours**

The Commission assumes that leased access programmers will use “in house” personnel whose pay is comparable to mid-level federal employees (GS-13/5, plus 30% overhead); therefore, the Commission estimates respondents’ costs to be about \$70.01 per hour.

1,000 hours x \$70.01/hour for “in house” staff = **\$70,010**

(b) Responses to bona fide leased access requests.

The Commission estimates that 500 cable systems will receive one or more of the 1,000 annual bona fide leased access requests.

The receiving cable system operator will respond to each bona fide leased access request,

OMB Control Number: 3060-0568
September 2019 Sections 76.970, 76.971 and 76.975, Commercial Leased Access Rates, Terms and Conditions, and Dispute Resolution

which will necessitate **1,000 annual responses to bona fide leased access requests.**

The Commission estimates that the average burden on cable system operators to maintain sufficient records of the information required to respond to bona fide leased access requests, gather the information (including conducting any necessary rate calculation), and disclose it to requesting potential leased access programmers, is 12 hours. The Commission estimates that cable system operators will prepare and send all responses to bona fide leased access requests “in house” using the cable system operator’s staff.

1,000 responses to bona fide requests x 12 hours per request = **12,000 hours**

The Commission assumes that cable system operators will use “in house” personnel whose pay is comparable to mid-level federal employees (GS-13/5, plus 30% overhead); therefore, the Commission estimates respondents’ costs to be about \$70.01 per hour.

12,000 hours x \$70.01/hour for “in house” staff = **\$840,120**

(c) Contact information disclosure.

Section 612 of the Communications Act of 1934, as amended, provides that the leased access set aside requirements apply to operators of cable systems with 36 or more activated channels. Out of total of approximately 4,413 cable systems,² the Commission estimates that approximately 55%, or **2,427 cable systems**, have 36 or more activated channels and thus are subject to the contact information disclosure requirement.

Each of these 2,427 cable systems will need to disclose the required contact information on its website, or through alternate means, for a total of **2,427 contact information disclosures.**

The Commission estimates that it will take each cable system operator approximately 0.5 hours per year to complete this contact information disclosure and update it as necessary. The Commission estimates that cable system operators will complete these contact information disclosures “in house” using the cable system operator’s staff.

2,427 contact information disclosures x 0.5 hours per disclosure = **1,214 hours**

² See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 16-247, Eighteenth Report, 32 FCC Rcd 568, 584, para. 39 (2017) (stating that there were 4,413 cable systems in the U.S. as of June 8, 2016).

OMB Control Number: 3060-0568
September 2019 Sections 76.970, 76.971 and 76.975, Commercial Leased Access Rates, Terms and Conditions, and Dispute Resolution

The Commission assumes that cable system operators will use “in house” personnel whose pay is comparable to clerical/administrative federal employees (GS-5/5, plus 30% overhead); therefore, the Commission estimates respondents’ costs to be about \$26.79 per hour.

1,214 hours x \$26.79/hour for “in house” staff = **\$32,523.06**

(d) Third party billing and collection services.

The Commission estimates that cable system operators will rarely need to provide billing and collection services to leased access programmers. Nonetheless, the Commission estimates that each of the 2,427 cable systems with 36 or more activated channels will spend no more than one hour each to identify third party identify a third-party billing and collection service and then make the necessary information available. The Commission estimates that cable system operators will handle this process “in house” using the cable system operator’s staff.

2,427 cable systems x 1 identification/disclosure per system = **2,427 identifications/disclosures of third-party billing and collection services**

2,427 collections/disclosures x 1 hour per collection/disclosure = **2,427 hours**

The Commission assumes that cable system operators will use “in house” personnel whose pay is comparable to clerical/administrative federal employees (GS-5/5, plus 30% overhead); therefore, the Commission estimates respondents’ costs to be about \$26.79 per hour.

2,427 hours x \$26.795/hour for “in house” staff = **\$65,019.33**

(e) Accountant leased access reviews.

The Commission estimates that 10 cable systems will be subject to one accountant leased access rate review each per year, for a total of approximately **10 accountant leased access rate reviews annually**. This total includes instances in which the parties cannot agree on a mutually acceptable accountant and thus must each select an independent accountant who in turn selects a third independent accountant.

The Commission estimates that the average burden on cable system operators and leased access programmers to arrange for an independent accountant review and coordinate rate

OMB Control Number: 3060-0568
September 2019 Sections 76.970, 76.971 and 76.975, Commercial Leased Access Rates, Terms and Conditions, and Dispute Resolution

information with the selected accountant will be approximately 4 hours. The Commission estimates that cable system operators and leased access programmers will arrange and coordinate with the independent accountant “in house” using their own staff.

10 accountant leased access reviews x 4 hours per review = **40 hours**

The Commission assumes that cable system operators and leased access programmers will use “in house” personnel whose pay is comparable to mid-level federal employees (GS-13/5, plus 30% overhead); therefore, the Commission estimates respondents’ costs to be about \$70.01/hour.

40 hours x \$70.01/hour for “in house” staff = **\$2,800.40**

(f) Dispute resolution

The Commission estimates that approximately **5 petitions for relief** under 47 CFR section 76.975 will be filed annually with the Commission. Each petition will likely result in an answer, for a total of **5 answers to petitions**, and each answer will likely result in a reply, for a total of **5 replies to answers**. We estimate that each petition will require an average burden of 40 hours to complete (including the time needed to attach independent accountant reports), each answer will require 30 hours, and each reply will require 20 hours.

5 petitions x 40 hours/petition =	200 hours
5 answers x 30 hours/answer =	150 hours
5 replies x 20 hours/reply =	<u>100 hours</u>
	450 hours

The Commission assumes that leased access programmers and cable system operators will use “in house” personnel whose pay is comparable to mid-level federal employees (GS 13/5, plus 30% overhead); therefore, the Commission estimates respondents’ costs to be about \$70.01 per hour.

200 hours for petitions x \$70.01 =	\$14,002
150 hours for answers x \$70.01 =	\$10,501.50
100 hours for replies x \$70.01 =	<u>\$7,001</u>
	\$31,504.50

Total number of respondents:

OMB Control Number: 3060-0568
September 2019 Sections 76.970, 76.971 and 76.975, Commercial Leased Access Rates, Terms and Conditions, and Dispute Resolution

250 leased access programmers
2,427 cable systems
2,677 respondents

Total number of responses:

1,000 bona fide leased access requests
1,000 responses to bona fide leased access requests
2,427 contact information disclosures
2,427 identifications/disclosures of third-party billing and collection services
10 accountant leased access rate reviews
5 petitions for relief
5 answers
5 replies
6,879 responses

Total annual burden hours:

1,000 hours (bona fide leased access requests)
12,000 hours (responses to bona fide leased access requests)
1,214 hours (contact information disclosures)
2,427 hours (identifications/disclosures of third-party billing and collection services)
40 hours (accountant leased access rate reviews)
450 hours (petitions for relief, answers, and replies)
17,131 hours

Total annual “in-house” cost:

\$70,010.00 (bona fide leased access requests)
\$840,120.00 (responses to bona fide leased access requests)
\$32,523.06 (contact information disclosures)
\$65,019.33 (identifications/disclosures of third-party billing and collection services)
\$2,800.40 (accountant leased access rate reviews)
\$31,504.50 (petitions for relief, answers, and replies)
\$1,041,977.29

13. Estimate of the total annual cost burden to the respondents resulting from the collection of information (excluding the value of the burden hours in #12 above).

(a) Total capital and start-up costs: We estimate that the total annual capital and start-up costs incurred by cable system operator respondents to identify third-party billing collection services and select accountants, and those costs incurred by leased access

OMB Control Number: 3060-0568
September 2019 Sections 76.970, 76.971 and 76.975, Commercial Leased Access Rates, Terms and Conditions, and Dispute Resolution

programmer respondents to select accountants, will be an aggregate of \$10,000.

\$10,000

(b) Total operation and maintenance costs: We estimate that there will be 1,000 annual bona fide leased access requests, and cable operators may assess a maximum application fee of \$100 per system-specific bona fide request, for a total of **\$100,000**. We also estimate that accountants will spend an average of 8 hours reviewing each operator’s maximum rate calculations and preparing the required report. Accountants are estimated to be paid \$100 per hour for their services:

10 accountant reviews x 8 hours per review x \$100/hour = **\$8,000**

(c) Total annualized cost requested: \$10,000 + \$100,000 + \$8,000 = **\$118,000**

14. Cost to the federal government: The Commission will review an estimated average of 5 leased access petitions and related pleadings per year under 47 CFR section 76.975. The Commission will use professional staff at the GS-13/5 level, managerial staff at the GS-14/5 level, and clerical staff at the GS-5/5 level to review and process these pleadings:

	Hours per case	Cost per hour	Cost per case
Professional	76 hours	\$53.85	\$4,092.60
Managerial	2 hours	\$63.64	\$127.28
Clerical	<u>1 hour</u>	\$20.61	<u>\$20.61</u>
	79 hours		\$4,240.49

\$4,240.49 x 5 cases = **\$21,202.45 total cost to the federal government**

15. The Commission has the following program changes to this collection as a result of the final information collection requirements contained in FCC 19-52: -1,353 respondents; -5,091 responses; -42,540 annual burden hours; and +\$44,000 annual cost.

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. There are no exceptions to the Certification Statement.

OMB Control Number: 3060-0568
September 2019 Sections 76.970, 76.971 and 76.975, Commercial Leased Access Rates, Terms and Conditions, and Dispute Resolution

B. Collections of Information Employing Statistical Methods

No statistical methods are employed.