

§ 76.972

47 CFR Ch. I (10–1–10 Edition)

(1) To the limited extent necessary to establish a reasonable price for the commercial use of designated channel capacity by an unaffiliated person; or

(2) To comply with 47 U.S.C. 532 (h), (j) and § 76.701.

(f)(1) A cable operator shall provide billing and collection services for commercial leased access cable programmers, unless the operator demonstrates 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.

(2) If an operator can make the showing required in paragraph (f)(1) of this section, it must, to the extent technically feasible make available data necessary to enable a third party to bill and collect for the leased access user.

(g) Cable operators shall not unreasonably limit the length of leased access contracts. The termination provisions of leased access contracts shall be commercially reasonable and may not allow operators to terminate leased access contracts without a reasonable basis.

(h) Cable operators may not prohibit the resale of leased access capacity to persons unaffiliated with the operator, but may provide in their leased access contracts that any sublessees will be subject to the non-price terms and conditions that apply to the initial lessee, and that, if the capacity is resold, the rate for the capacity shall be the maximum permissible rate.

[58 FR 29753, May 21, 1993, as amended at 61 FR 16401, Apr. 15, 1996; 62 FR 11381, Mar. 12, 1997]

§ 76.972 Customer service standards.

(a)(1) A cable system operator shall maintain a contact name, telephone number and e-mail address on its Web site and available by telephone of a designated person to respond to requests for information about leased access channels.

(2) A cable system operator shall maintain a brief explanation of the leased access statute and regulations on its Web site.

(b) Cable system operators shall provide prospective leased access programmers with the following information within three business days of the date on which a request for leased access information is made:

(1) The cable system operator's process for requesting leased access channels;

(2) The geographic and subscriber levels of service that are technically possible;

(3) The number and location and time periods available for each leased access channel;

(4) Whether the leased access channel is currently being occupied;

(5) A complete schedule of the operator's statutory maximum full-time and part-time leased access rates;

(6) A comprehensive schedule showing how those rates were calculated;

(7) Rates associated with technical and studio costs;

(8) Whether inclusion in an electronic programming guide is available;

(9) The available methods of programming delivery and the instructions, technical requirements and costs for each method;

(10) A comprehensive sample leased access contract that includes uniform terms and conditions such as tier and channel placement, contract terms and conditions, insurance requirements, length of contract, termination provisions and electronic guide availability; and

(11) Information regarding prospective launch dates for the leased access programmer.

(c) A bona fide proposal, as used in this section, is defined as a proposal from a potential leased access programmer that includes the following information:

(1) The desired length of a contract term;

(2) The tier, channel and time slot desired;

(3) The anticipated commencement date for carriage;

(4) The nature of the programming;

(5) The geographic and subscriber level of service requested; and

(6) Proposed changes to the sample contract.

(d) All requests for leased access must be made in writing and must

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specify the date on which the request was sent to the operator.

(e) A cable system operator must respond to a bona fide proposal within 10 days after receipt.

(f) A cable system operator will be subject to a forfeiture for each day it fails to comply with §§ 76.972(a) or 76.972(e).

(g)(1) Operators of systems subject to small system relief shall provide the information required in paragraph (b) of this section within 30 calendar days of a bona fide request from a prospective leased access programmer. For these purposes, systems subject to small system relief are systems that either:

(i) Qualify as small systems under § 76.901(c) and are owned by a small cable company as defined under § 76.901(e); or

(ii) Have been granted special relief.

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

(i) The desired length of a contract term;

(ii) The time slot desired;

(iii) The anticipated commencement date for carriage; and

(iv) The nature of the programming.

[73 FR 10691, Feb. 28, 2008]

EFFECTIVE DATE NOTE: At 73 FR 10691, Feb. 28, 2008, § 76.972 was added. Paragraphs (a), (b), (c), (d), (e), and (g) of this section, which contain information collection and record-keeping requirements, and paragraph (f), which contains requirements related to those information collection requirements, will not become effective until approval has been given by the Office of Management and Budget.

§ 76.975 Commercial leased access dispute resolution.

(a) Any person aggrieved by the failure or refusal of a cable operator to make commercial channel capacity available in accordance with the provisions of Title VI of the Communications Act may bring an action in the district court of the United States for the Judicial district in which the cable system is located to compel that such capacity be made available.

(b) 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, or our implementing regulations, §§ 76.970, 76.971, and 76.972 may file a petition for relief with the Commission.

(c) A petition must contain a concise statement of the facts constituting a violation of the statute or the Commission's rules, the specific statute(s) or rule(s) violated, and certify that the petition was served on the cable operator.

(d) The petition must be filed within 60 days of the alleged violation. The time limit on filing complaints will be suspended if the complainant files a notice with the Commission prior to the expiration of the filing period, stating that it seeks an extension of the filing deadline in order to pursue active negotiations with the cable operator, and the cable operator agrees to the extension.

(e) *Discovery.* In addition to the general pleading and discovery rules contained in § 76.7 of this part, parties to a leased access complaint may serve requests for discovery directly on opposing parties, and file a copy of the request with the Commission. The respondent shall have the opportunity to object to any request for documents that are not in its control or relevant to the dispute. Such request shall be heard, and determination made, by the Commission. Until the objection is ruled upon, the obligation to produce the disputed material is suspended. Any party who fails to timely provide discovery requested by the opposing party to which it has not raised an objection, or who fails to respond to a Commission order for discovery material, may be deemed in default and an order may be entered in accordance with the allegations contained in the complaint, or the complaint may be dismissed with prejudice.

(f) *Protective orders.* In addition to the procedures contained in § 76.9 of this part related to the protection of confidential material, the Commission may issue orders to protect the confidentiality of proprietary information required to be produced for resolution