

leased access user in order to prevent that user from obtaining channel capacity. Leased access users must reimburse operators for the reasonable cost of any technical support actually provided by the operator that is beyond that provided for non-leased access programmers on the system. A cable operator may charge leased access programmers for the use of technical equipment that is provided at no charge for public, educational and governmental access programming, provided that the operator's franchise agreement requires it to provide the equipment and does not preclude such use, and the equipment is not being used for any other non-leased access programming. Cable operators that are required to purchase technical equipment in order to accommodate a leased access programmer shall have the option of either requiring the leased access programmer to pay the full purchase price of the equipment, or purchasing the equipment and leasing it to the leased access programmer at a reasonable rate. Leased access programmers that are required to pay the full purchase price of additional equipment shall have all rights of ownership associated with the equipment under applicable state and local law.

(d) Cable operators may require reasonable security deposits or other assurances from users who are unable to prepay in full for access to leased commercial channels. Cable operators may impose reasonable insurance requirements on leased access programmers. Cable operators shall bear the burden of proof in establishing reasonableness.

(e) Cable operators may not set terms and conditions for commercial leased access use based on content, *except*:

(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 sub-

stantially 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;

## Federal Communications Commission

## § 76.975

(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 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.