

Access Stimulation, it shall within 45 days of commencing Access Stimulation, or by [date 45 days after effective date of the final rule], whichever is later, notify in writing all Intermediate Access Providers which it subtends and Interexchange Carriers with which it does business of the following:

(1) That it is a local exchange carrier engaged in Access Stimulation;

(2) That it will either:

(i) Obtain and pay for terminating access services from Intermediate Access Providers for such traffic as of that date; or

(ii) Offer direct-trunked transport service to any affected Interexchange Carrier (or to an Intermediate Access Provider of the Interexchange Carrier's choosing); and

(3) To the extent that the local exchange carrier engaged in Access Stimulation intends to comply with paragraph (a) of this section through electing the option described in paragraph (a)(2) of this section, designate where on its network it will accept the requested direct connection.

(c) Nothing in this section creates an independent obligation for a local exchange carrier to construct new facilities other than, as necessary, adding switch trunk ports.

(d) In the event that an Intermediate Access Provider receives notice under paragraph (b) of this section that a local exchange carrier engaged in Access Stimulation will be obtaining and paying for terminating access service from such Intermediate Access Provider, an Intermediate Access Provider shall not bill Interexchange Carriers terminating tandem switching and terminating switched transport access for traffic bound for such local exchange carrier but, instead bill such local exchange carrier for such services.

(e) Notwithstanding any provision of this section, any carrier that is not itself engaged in Access Stimulation, as that term is defined in § 61.3(bbb) of this chapter, but serves as an Intermediate Access Provider with respect to traffic bound for an access-stimulating local exchange carrier, shall not itself be deemed a local exchange carrier engaged in Access Stimulation or be affected by this rule other than paragraph (d) of this section.

■ 4. Amend § 51.917 by revising paragraph (c) to read as follows:

**§ 51.917 Revenue recovery for Rate-of-Return Carriers.**

\* \* \* \* \*

(c) *Adjustment for Access Stimulation activity.* 2011 Rate-of-Return Carrier Base Period Revenue shall be adjusted

to reflect the removal of any increases in revenue requirement or revenues resulting from Access Stimulation activity the Rate-of-Return Carrier engaged in during the relevant measuring period. A Rate-of-Return Carrier should make this adjustment for its initial July 1, 2012, tariff filing, but the adjustment may result from a subsequent Commission or court ruling.

\* \* \* \* \*

[FR Doc. 2018-13699 Filed 6-28-18; 8:45 am]

BILLING CODE 6712-01-P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 76**

[MB Docket Nos. 07-42 and 17-105; FCC 18-80]

**Leased Commercial Access; Modernization of Media Regulation Initiative**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission seeks to update its leased access rules as part of its Modernization of Media Regulation Initiative. First, the Commission tentatively concludes that it should vacate its *2008 Leased Access Order*, which the U.S. Court of Appeals for the Sixth Circuit has stayed for a decade in conjunction with several judicial appeals of the order. Second, the Commission seeks input on the state of the leased access marketplace generally and invites comment on ways to modernize its existing leased access rules.

**DATES:** Comments are due on or before July 30, 2018; reply comments are due on or before August 13, 2018.

**ADDRESSES:** You may submit comments, identified by MB Docket Nos. 18-80 and 17-105, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Federal Communications Commission's website:* <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.

- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- *People with Disabilities:* Contact the FCC to request reasonable

accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: (202) 418-0530 or TTY: (202) 418-0432.

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, contact Diana Sokolow, [Diana.Sokolow@fcc.gov](mailto:Diana.Sokolow@fcc.gov), of the Policy Division, Media Bureau, (202) 418-2120.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Further Notice of Proposed Rulemaking, FCC 18-80, adopted on June 7, 2018 and released on June 8, 2017. The full text is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW, Room CY-A257, Washington, DC 20554. This document will also be available via ECFS at <http://fjallfoss.fcc.gov/ecfs/>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

**Synopsis**

1. In this Further Notice of Proposed Rulemaking (FNPRM), we seek to update our leased access rules as part of the Commission's Modernization of Media Regulation Initiative. In response to the public notice initiating the media modernization proceeding, some commenters made proposals related to the Commission's leased access rules, which require cable operators to set aside channel capacity for commercial use by unaffiliated video programmers.<sup>1</sup> By addressing these proposals in this FNPRM, we advance our efforts to modernize our media regulations and remove unnecessary requirements that can impede competition and innovation in the media marketplace.

2. We tentatively conclude that we should vacate the *2008 Leased Access Order*, including the Further Notice of Proposed Rulemaking issued in conjunction with that order. This action would enable the Commission to clean up a longstanding backlog and position us to freshly consider new revisions to

<sup>1</sup> The leased access rules are in Subpart N of Part 76, which was listed in the *Media Modernization Public Notice* as one of the principal rule parts that pertains to media entities and that is the subject of the media modernization review.

the leased access rules.<sup>2</sup> Due to the Sixth Circuit proceedings as well as the OMB disapproval, the rule changes contained in the *2008 Leased Access Order* never went into effect. The leased access rules that are currently in effect, and that currently appear in the Code of Federal Regulations, are those that were in existence prior to the *2008 Leased Access Order*. Accordingly, vacating the *2008 Leased Access Order* would not have any impact on any party's compliance with or expectations concerning the leased access requirements.

3. In making this tentative conclusion, we note the concerns the Sixth Circuit expressed in its Stay Order regarding the leased access rules that were adopted in the *2008 Leased Access Order*, including "that NCTA has raised some substantial appellate issues." The Sixth Circuit determined that a stay of the *2008 Leased Access Order* was justified due to "[t]he balance of the harms and the public interest, as well as NCTA's potential of success on the merits." The Sixth Circuit also noted NCTA's argument that cable operators would suffer irreparable harm absent a stay because the new leased access rate formula adopted in the order would set leased access rates at an unreasonably low level, which would lead to more leased access requests that would displace other programming, ultimately leading to dissatisfied cable customers.

4. Further support for our tentative finding that we should vacate the *2008 Leased Access Order* arises from the concerns about the paperwork burden set forth in the OMB Notice. OMB detailed five ways in which certain requirements adopted in the order were inconsistent with the PRA. OMB specifically cited the Commission's failure to demonstrate the need for the more burdensome requirements adopted, its failure to demonstrate that it had taken reasonable steps to minimize the burdens, and its failure to provide reasonable protection for proprietary and confidential information. Some commenters in the media modernization proceeding agree with OMB that the *2008 Leased Access Order* failed to comply with the PRA.

5. We also tentatively find that vacating the *2008 Leased Access Order* would be consistent with the goal of the Commission's Modernization of Media Regulation Initiative to remove rules that are outdated or no longer justified

by market realities. Because of the concerns raised in the Sixth Circuit Stay Order and the OMB Notice, the significant amount of time that has passed since the *2008 Leased Access Order* was adopted and became subject to a stay, the significant amount of time that the cable industry and programmers have remained subject to the pre-existing leased access rules during the pendency of the stay, and the very small number of leased access disputes brought before the Commission in recent years,<sup>3</sup> we tentatively find that there is no sound policy basis for the rules adopted in the *2008 order* at this point. For all these reasons, rather than proceeding with the pending judicial review of the *2008 Leased Access Order* that has now been stayed for a decade, we tentatively conclude that a better approach would be for the Commission to vacate the *2008 Leased Access Order* and consider potential rule revisions anew.

6. We seek comment on our tentative conclusions. Is there any policy justification for not vacating the entire order? Is there any policy justification for retaining any particular rules adopted therein? Parties urging us not to vacate the entire order or particular rules should specify how the Commission should overcome both the judicial concerns noted in the Sixth Circuit Stay Order and those raised in the OMB Notice. We also ask parties to address any benefits associated with the *2008 rules* and whether these benefits outweigh the costs.

7. We next seek comment on any updates and improvements we should make to our existing leased access rules. The stated purpose of the leased access statute "is to promote competition in the delivery of diverse sources of video programming and to assure that the widest possible diversity of information sources are made available to the public from cable systems in a manner consistent with growth and development of cable systems." The statute also specifies that the price, terms, and conditions for commercial leased access should be "at least sufficient to assure that such use will not adversely affect the operation, financial condition, or market development of the cable system." We note that the video distribution marketplace has become much more competitive since Congress first established the leased access regime in 1984. For example, at that time, direct broadcast satellite (DBS) service was not

available to consumers as an alternative to cable. While consumers previously had access to only one pay television service, today they have access to multiple pay television services as well as online video programming. In addition, the number of channels offered by cable operators has increased.

8. Against this backdrop, we invite comment on the current state of the leased access marketplace generally and on whether, and if so how, the prevalence of alternative means of video distribution should influence our actions in this proceeding. How many leased access programmers are currently in existence, and is that number increasing or decreasing? What portion of a cable system's programming consists of leased access? Do the leased access rules currently in effect facilitate the successful leasing of time by leased access programmers, and if not, what issues do programmers experience? To what extent do leased access programmers continue to rely on cable carriage versus alternative means of distribution? Does the widespread availability of DBS service today or the proliferation of online video distributors provide programmers, including leased access programmers, with more options for content distribution?

9. As discussed below, we also seek comment on specific proposals raised in the media modernization proceeding to update and improve the Commission's existing leased access rules as well as on any other proposals we should consider.

10. First, as supported by several commenters in the media modernization proceeding, we propose to revise § 76.970(i) of our rules to provide that all cable operators, and not just those that qualify as "small systems" under that rule, are required to provide the information specified in paragraph (i)(1) only in response to a bona fide request for leased access information from a prospective leased access programmer.<sup>4</sup> For purposes of the leased access rules applicable to cable operators eligible for small system relief,<sup>5</sup> a bona fide request for information is defined as a request

<sup>4</sup> The *2008 Leased Access Order* distinguished between "requests for information" and "proposals for leased access." Had that order gone into effect, it would have provided non-small cable systems with three days to respond to a request for information, whereas small cable systems would have had 30 days to respond to a bona fide request for information. All cable systems, regardless of size, would have been required to respond to bona fide leased access proposals within 10 days of receipt.

<sup>5</sup> For purposes of the leased access rules, a small system is defined as either (i) a system that qualifies as small under § 76.901(c) of the Commission's rules and is owned by a small cable company as defined in § 76.901(e); or (ii) a system that has been granted special relief.

<sup>2</sup> If we vacate the *2008 Leased Access Order*, we will subsequently dismiss as moot the NCTA FCC Stay Request (asking the Commission to stay the *2008 Leased Access Order*) and the TVC Recon Petition (seeking reconsideration of the *2008 Leased Access Order*).

<sup>3</sup> The Commission currently adjudicates an average of less than one leased access dispute per year.

from a potential leased access programmer that includes: “(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.”

11. Section 76.970(i)(1) directs cable operators to provide prospective leased access programmers with the following information: “(i) How much of the operator’s leased access set-aside capacity is available; (ii) A complete schedule of the operator’s full-time and part-time leased access rates; (iii) Rates associated with technical and studio costs; and (iv) If specifically requested, a sample leased access contract.” Current rules require operators of small cable systems to provide the information only in response to a bona fide request from a prospective leased access programmer, whereas other cable system operators must provide the information in response to any request for leased access information.<sup>6</sup> As a result, some operators of systems that do not qualify as small may spend a significant amount of time compiling information to respond to non-bona fide leased access inquiries. These operators are not permitted to ask prospective leased access programmers for any information before responding to a leased access request, due to the Commission’s concern that cable operators otherwise could use requests for information to discourage leasing access.

12. We seek comment on our proposal to extend the bona fide request limitation to all leased access requests. Is there any reason not to provide all cable operators with the flexibility of responding only to a bona fide request? We ask commenters to provide information on the costs that cable operators currently face in responding to non-bona fide leased access requests. How often do cable operators receive non-bona fide leased access requests, and how much time does it take to provide the required information in response to such a request? Does the bona fide request limitation that currently applies to operators of small cable systems in any way discourage prospective leased access programmers, including small programmers, from seeking to lease access and if so, how? If we extend the bona fide request limitation to all leased access requests, should we adopt any modifications to

the current definition of a bona fide request?

13. Second, we invite comment on whether we should extend the time within which cable operators must provide prospective leased access programmers with the information specified in § 76.970(i)(1) of our rules. Current rules require cable system operators to provide the required information “within 15 calendar days of the date on which a request for leased access information is made,” while operators of systems that are subject to small system relief must provide the required information “within 30 calendar days of a bona fide request from a prospective leased access programmer.” We invite comment on whether cable operators have found it difficult to comply with the current deadlines for providing the required information, and if so, why. What steps must cable operators take to compile the information listed in § 76.970(i)(1) of the Commission’s rules, and what costs do cable operators face in doing so under the current timeframe? Is the information readily available to cable operators? We also seek input on whether leased access programmers have found that the required information is generally provided on a timely basis in accordance with current rules. If, as discussed above, we revise our rules to provide that all cable operators, and not just those with small systems, are required to provide the listed information only in response to a bona fide request from a prospective leased access programmer, then is there any basis for extending the deadline to provide the information?

14. NCTA asks the Commission to provide cable operators with additional time, such as 45 days, within which “to respond to requests to lease time on multiple systems.” Is a 45-day response period reasonable for leased access requests covering multiple systems, and if not, what response time period is appropriate? Is it necessary to also provide additional response time for single cable systems? Do leased access requests typically involve multiple systems or are single-system requests often made? Would lengthening the deadline serve as a deterrent to or create a hardship for potential leased access programmers? Should we maintain a longer deadline for operators of small cable systems as compared to other cable operators?

15. Third, as urged by several commenters in the media modernization proceeding, we seek comment on whether we should permit cable operators to require leased access programmers to pay a nominal

application fee<sup>7</sup> and/or a deposit,<sup>8</sup> which is currently prohibited. Cable operators state that requiring a deposit or a nominal application fee would “help defray the costs of gathering the information necessary to calculate the leased access rate and to respond to any bona fide requests for leased access capacity that never lead to an actual leased access agreement.” In the past the Commission has not supported the collection of fees or deposits with respect to leased access. In light of this history, how should we consider the impact of fees and deposits on interest, accessibility and diversity in leased access? Although the Commission previously found that such fees and deposits are not permissible, has anything changed that may persuade us that they are now a reasonable means of covering the costs of responding to leased access inquiries? If the Commission permits fees, what criteria should be used to determine whether an application fee is nominal? Rather than adopting rules governing what constitutes a “nominal” application fee, should the Commission evaluate such fees on a case-by-case basis when presented with a complaint that a particular fee is not nominal? Similarly, if we permit deposits, should we establish rules regarding an appropriate deposit amount, or alternatively, evaluate deposits on a case-by-case basis? If the Commission decides to adopt rules, how should it decide whether a deposit is reasonable? Should the cable operator refund all or part of the deposit if the leased access request does not result in carriage?

16. We seek comment on whether it would be preferable to permit a nominal application fee or a deposit, or both, and on the costs and benefits of each option. If we adopt our proposal to require all cable operators to respond only to bona fide leased access requests, is there any justification for requiring a deposit or application fee? Would requiring a deposit or application fee prior to obtaining the information set forth in § 76.970(i)(1) dissuade potential leased access programmers, particularly small entities, from seeking to lease access? Finally, should the Commission permit all cable operators, or permit only small cable operators, to require a nominal application fee or deposit before the

<sup>7</sup> By “nominal application fee,” we mean a processing fee that would be collected and retained by the cable operator regardless of whether the request results in leased access carriage.

<sup>8</sup> By “deposit,” we mean a potentially more substantial fee that would be collected by the cable operator and used to offset future payments (e.g., the first month’s payment) if the leased access request results in carriage.

<sup>6</sup> We propose to correct § 76.970(i)(2) by replacing the reference to “paragraph (h)(1) of this section,” which does not exist, with “paragraph (i)(1) of this section.” All leased access requests are required to be in writing and to specify the date on which the request was sent to the cable operator.

operator responds to a leased access request by providing the information set forth in § 76.970(i)(1)? Any commenter advocating that we permit only small cable operators to require a nominal application fee or deposit should explain its rationale.

17. Fourth, we invite comment on modifications to our procedures for addressing leased access disputes. Congress has provided the Commission with authority to adjudicate leased access disputes. Parties previously have contacted Commission staff to express confusion about inconsistencies between the leased access dispute resolution rule (§ 76.975) and the Commission's more general rule governing complaints (§ 76.7). Accordingly, to promote consistency between the two rules, we propose to revise § 76.975 of our rules as follows. First, we propose to revise our terminology by referencing an answer to a petition, rather than a response to a petition. Second, we propose that the 30-day timeframe for filing an answer to a leased access petition should be calculated from the date of service of the petition, rather than the date on which the petition was filed. Third, whereas § 76.975 currently does not include any allowance for replies, we propose adding a provision stating that replies to answers must be filed within 15 days after submission of the answer. Fourth, we propose adding a statement that § 76.7 applies to petitions for relief filed under § 76.975, unless otherwise provided in § 76.975. We invite comment on these proposals, which we intend to alleviate any ongoing confusion about how both §§ 76.7 and 76.975 govern leased access proceedings. Is 15 days the appropriate timeframe for submitting a reply to an answer to a leased access petition? We note that the general complaint-filing rule provides 10 days for filing replies, but it also provides only 20 days for filing an answer, whereas the leased access rule provides 30 days for an answer. Are there any other changes we should make to our rules in order to make the adjudication of leased access disputes more efficient?

18. Finally, we invite comment on any other ways in which we should modernize our leased access rules. For example, are any new rules needed to govern the relationship between leased access programmers and cable operators, such as a rule requiring cable operators to provide programmers with contact information for the person responsible for leased access matters? Should we adopt any new rules governing leased access rates or part-time leased access? Commenters

supporting additional rules governing leased access rates should explain why additional rate rules are needed and what issues the rules should address. We ask commenters to explain the relative costs and benefits of any additional proposals.

19. In seeking comment on updating the FCC's leased access rules, we also seek comment on whether our rules implicate First Amendment interests. If so, what level of First Amendment scrutiny is appropriate, and how does that analysis apply to our existing rules and the potential changes we seek comment on here, in light of the statutory obligations of section 612? In this context, we also seek comment on whether there have been any changes in the video distribution market since Congress and the FCC first addressed these issues that are relevant to the First Amendment analysis. For instance, are there relevant changes in the distribution market that we should now consider? Is the FCC's 2015 decision regarding effective competition relevant to this analysis?

20. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on small entities by the policies and rules proposed in the FNPRM. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the FNPRM. The Commission will send a copy of the FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In summary, the FNPRM seeks to update the Commission's leased access rules as part of its Modernization of Media Regulation Initiative. First, it tentatively concludes that we should vacate the Commission's *2008 Leased Access Order*, which the U.S. Court of Appeals for the Sixth Circuit has stayed for a decade in conjunction with several judicial appeals of the order. Second, it seeks input on the state of the leased access marketplace generally and invites comment on ways to modernize our existing leased access rules. The proposed action is authorized pursuant to sections 4(i), 303, and 612 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, and 532. The types of small entities that may be affected by the proposals contained in the FNPRM fall within the following categories: Cable Television Distribution Services, Cable Companies and Systems (Rate Regulation), Cable System

Operators (Telecom Act Standard), Cable and Other Subscription Programming, Motion Picture and Video Production, and Motion Picture and Video Distribution. The projected reporting, recordkeeping, and other compliance requirements are: (1) A tentative conclusion that we should vacate the *2008 Leased Access Order*; (2) as suggested by commenters in response to the *Media Modernization Public Notice*, a proposal to require cable operators to respond only to bona fide requests from prospective leased access programmers; (3) seeking comment on other suggested changes to leased access rules that were raised in the media modernization proceeding, including extending the timeframe for providing responses to leased access requests and permitting cable operators to require leased access programmers to pay a nominal application fee and/or a deposit; and (4) seeking comment on proposals to modify our procedures for addressing leased access disputes. There is no overlap with other regulations or laws.

21. We note that the FNPRM tentatively finds that vacating the *2008 Leased Access Order* would be consistent with the goal of the Commission's Modernization of Media Regulation Initiative to remove rules that are outdated or no longer justified by market realities. It is within this backdrop that the Commission tentatively concludes that it should vacate the *2008 Leased Access Order*. The FNPRM explains that further support for our tentative finding that we should vacate the *2008 Leased Access Order* arises from the concerns about the paperwork burden set forth in the OMB Notice, where OMB detailed five ways in which certain requirements adopted in the order were inconsistent with the PRA.

22. Regarding specific proposals involving the leased access rules, the Commission invites comment on alternative ways it can reduce burdens on small entities. For example, the Commission proposes to extend the current bona fide request limitation, which only applies to operators of small cable systems, to all operators. The FNPRM seeks information on whether the current bona fide request limitation in any way discourages prospective leased access programmers, including small programmers, from seeking to lease access and if so, how. For example, if prospective leased access programmers indicate that they find it difficult to prepare a request that constitutes a "bona fide" request, the Commission will consider such difficulties in determining how to

proceed. To the extent there is currently any negative impact on prospective leased access programmers, including small programmers, the Commission will weigh that impact in determining how to proceed. The FNPRM also considers the timeframe within which cable operators must provide prospective leased access programmers with the information specified in § 76.970(i)(1) of the Commission's rules. The FNPRM considers whether, in the alternative to adopting a single deadline for all cable systems, it should instead maintain a longer deadline for operators of small cable systems. Such an approach could minimize the impact of the leased access rules on small cable system operators. Similarly, in the alternative to permitting all cable operators to require a nominal application fee or deposit before the operator responds to a leased access request by providing the information set forth in § 76.970(i)(1), the FNPRM considers whether it should permit only small cable operators to do so. Such an approach could ease burdens on small cable operators. The FNPRM also considers the impact of requiring a deposit or application fee on small programmers, by asking whether potential leased access programmers, particularly small entities, would be dissuaded from seeking to lease access if faced with a deposit or application fee. The Commission will consider responses to all of these issues in determining how to proceed.

23. This document contains proposed new or revised information collection requirements, including the proposal that all cable operators are required to provide the information specified in § 76.970(i)(1) only in response to a bona fide request from a prospective leased access programmer, and the addition of a provision governing replies to answers to leased access complaints. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

24. *Permit-But-Disclose*. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance

with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

25. The proposed action is authorized pursuant to sections 4(i), 303, and 612 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, and 532.

#### List of Subjects in 47 CFR Part 76

Administrative practice and procedure, Cable television, Reporting and recordkeeping requirements.

Federal Communications Commission.

**Katura Jackson,**

*Federal Register Liaison Officer, Office of the Secretary.*

#### Proposed Rules

For the reasons discussed in the preamble, the Federal Communications

Commission proposes to amend 47 CFR part 76 as follows:

#### PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The authority citation for part 76 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 2. Amend § 76.970 by revising paragraph (i)(1) and (2) to read as follows:

#### § 76.970 Commercial leased access rates.

\* \* \* \* \*

(i)(1) Cable system operators shall provide prospective leased access programmers with the following information within 15 calendar days of the date on which a bona fide request for leased access information is made:

(i) How much of the operator's leased access set-aside capacity is available;

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

(iii) Rates associated with technical and studio costs; and

(iv) If specifically requested, a sample leased access contract.

(2) Operators of systems subject to small system relief shall provide the information required in paragraph (i)(1) 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.

\* \* \* \* \*

■ 3. Amend § 76.975 by revising paragraph (e) and adding paragraph (i) to read as follows:

#### § 76.975 Commercial leased access dispute resolution.

\* \* \* \* \*

(e) 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.

\* \* \* \* \*

(i) Section 76.7 applies to petitions for relief filed under this section, except as otherwise provided in this section.

[FR Doc. 2018-14014 Filed 6-28-18; 8:45 am]

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 211

[Docket DARS-2018-0021]

RIN 0750-AJ23

#### Defense Federal Acquisition Regulation Supplement: Use of Commercial or Non-Government Standards (DFARS Case 2017-D014)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) implement a section of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328), which requires DoD to revise the DFARS to encourage contractors to propose commercial or non-Government standards and industry-wide practices that meet the intent of military specifications and standards.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before August 28, 2018, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2017-D014, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Search for "DFARS Case 2017-D014." Select "Comment Now" and follow the instructions provided to submit a comment. Please include "DFARS Case 2017-D014" on any attached documents.

- *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2017-D014 in the subject line of the message.

- *Fax:* 571-372-6094.

- *Mail:* Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD(A&S)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately 2 to 3 days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Gomersall, telephone 571-372-6099.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD is proposing to amend the DFARS to implement section 875(c) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114-328). Section 875(c) requires DoD to revise the DFARS to encourage contractors to propose commercial or non-Government standards and industry-wide practices that meet the intent of military specifications and standards.

##### II. Discussion and Analysis

DoD is proposing to amend DFARS 211.107(b) to require the use of Federal Acquisition Regulation (FAR) provision 52.211-7, Alternatives to Government-Unique Standards, in DoD solicitations and contracts that include military or Government-unique specifications and standards; and, in so doing, encourage and permit offerors to propose alternatives to Government-unique standards using an existing FAR provision.

The use of FAR provision 52.211-7 is optional for agencies that report their use of voluntary consensus standards to the National Institute of Standards and Technology using the categorical reporting method. However, Office of Management and Budget (OMB) Circular A-119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities, requires, at paragraph 12.a.(4), that agencies using the categorical method of reporting method must "Enable potential offerors to suggest voluntary consensus standards that can replace Government-unique standards." Use of this existing FAR provision will enable DoD to meet the intent of section 875(c).

In response to OMB Circular A-119, the National Institute of Standards and Technology collects reports from Federal Agencies on their use of Government-unique standards, which is reported annually to Congress. DoD statistics used for that report do not differentiate among the many different

types of Government-unique Standards. The overriding conceptual approach is to reduce Government reliance on standards produced by Government entities for their own use.

As a matter of existing policy, DoD discourages the use of military specifications and standards in solicitations. As stated in DoD Directive 5000.01: "When using performance-based strategies, contract requirements shall be stated in performance terms, limiting the use of military specifications and standards to Government-unique requirements only." However, to meet the intent of section 875(c) of the NDAA for FY 2017, DoD is proposing to amend DFARS 211.107(b) to require the use of FAR provision 52.211-7, Alternatives to Government-Unique Standards, in DoD solicitations and contracts that include military or Government-unique specifications and standards to encourage and permit offerors to propose alternatives to Government-unique standards.

##### III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and Contracts for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

The purpose of this rule is to implement section 875(c) of the NDAA for FY 2017, which requires DoD to revise the DFARS to encourage contractors to propose commercial or non-Government standards and industry-wide practices that meet the intent of military specifications and standards. DoD does not intend to apply the requirements of section 875(c) to solicitations for contracts valued at or below the SAT or to contracts for commercial items, including COTS items, because such contracts do not generally include or require use of military or Government-unique standards or specifications.

##### IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of