

May 3, 2019

Ex Parte

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: In the Matter of Leased Commercial Access Modernization of Media
Regulation Initiative: MB Docket No. 07-42; No. 17-105**

Dear Ms. Dortch:

On May 1, 2019, Jordan Goldstein (Comcast Corporation), Maureen O'Connell (Charter Communications), Rick Chessen (NCTA), and I met with Susan Aaron, Ashley Boizelle, and David Konczal of the Office of General Counsel and Steven Broecker, Martha Heller, Nancy Murphy, Holly Saurer, and Diana Sokolow of the Media Bureau.

On May 2, 2019, Mr. Goldstein, Ms. O'Connell, Mr. Chessen and I met with Chief of Staff Matthew Berry.

In both meetings, we reiterated that the Commission should reduce the burdens the leased access rules currently impose on cable operators. In particular, we encouraged the Commission to modify the existing rate formula to incorporate a simpler, more logical "tier-specific" calculation when an operator elects to place leased access programming on the basic service tier. We also encouraged the Commission to eliminate part-time leased access obligations, which are not statutorily mandated and impose an outsized burden on operators. During the meetings, we noted the direct and indirect discussion of these issues in the Further Notice of Proposed Rulemaking ("FNPRM")¹ and the related record from the parties, as laid out in the attached.

Very truly,

Steven J. Horvitz



¹ The requested modifications are "logical outgrowths" of the FNPRM. See generally *U.S. Telecom Assoc. v. FCC*, 825 F.3d 674 (D.C. Cir. 2016); *Agape Church, Inc. v. FCC*, 738 F.3d 397, 411 (D.C. Cir. 2013); *Covad Communications Co. v. FCC*, 450 F.3d 428, 548 (D.C. Cir. 2006); *Alto Dairy v. Veneman*, 336 F.3d 560, 570 (7th Cir. 2003).

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LEASED ACCESS RECORD

RATES

- **FNPRM**

- “Should we adopt any new rules governing leased access rates [or part-time leased access]?” [FNPRM, ¶ 24]
- “Finally we invite comment on any other ways in which we should modernize our leased access rules.” [FNPRM, ¶ 24]:
- “In addition, we seek comment on other suggested changes to leased access rules *that were raised in the media modernization proceeding....*” [FNPRM, ¶ 2]
 - Verizon previously proposed eliminating regulation of leased access rates in the Media Modernization Proceeding [Verizon Comments, pp. 8-11, *Modernization of Media Regulation*, MB Dkt. No. 17-105 (July 5, 2017).]
- “Is there any policy justification for retaining any particular rules adopted [in the 2008 Order]?” [FNPRM, ¶12]
 - The FNPRM expressly describes the tier-specific component of the 2008 Order:

We harmonize the rate methodology for carriage on tiers with more than 50% subscriber penetration and carriage on tiers with lower levels of penetration by calculating the leased access rate based upon the characteristics of the tier on which the leased access programming will be placed. Cable operators will calculate a leased rate for each cable system on a tier-by-tier basis which will adequately compensate the operator for the net revenue that is lost. [FNPRM, at FN 12.]

- **COMMENTS**

- *NCTA*, at 25-28 (advocating elimination of rate regulation or, at a minimum, a tier-specific rate calculation – “[T]he Commission should modify its average implicit fee calculation to permit cable operators that choose to carry a leased access channel on the basic service tier to calculate the average implicit fee based *only* on the channels and programming costs for that specific tier.”)
- *American Independent Media, Inc.*, at 12 (suggesting the FCC “discard its current formula, which tries to approximate a cable operator’s profit margin”)
- *Small Business Network*, at 4-5 (suggesting a per subscriber rate cap)
- *Baskin L. Jones*, at 5-6 (asserting that rates are “prohibitively expensive”)
- *Leased Access Programmers Association*, at 11 (suggesting the FCC revisit the 2008 rate methodology)
- *American Cable Association*, at 7-8 (suggesting a “safe harbor” rate)

PART-TIME

- **FNPRM**

- “Should we adopt any new rules governing [leased access rates or] *part-time leased access*?” [FNPRM, ¶ 24.]
- “[I]nvite[s] comment on . . . whether the prevalence of alternative means of video distribution should influence our actions in this proceeding.” [FNPRM, ¶ 14]
- “In this context, we 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 instances, are there relevant changes in the distribution market that we should now consider?” [FNPRM, ¶ 25]

- **COMMENTS**

- *NCTA*, at 22-25 (advocating elimination of part-time CLA)
- *Leased Access Programmers Association*, at 13 (“We oppose any attempt to eliminate part-time leased access”)
- *Combonate Media Group*, at 3 (opposing “the request that part-time leased access be eliminated”)

REPLY COMMENTS

- *Leased Access Programmers Association*, at 7 (“The Commission should further reject any requests for elimination or substantial changes to the part-time leased access requirements”)
- *American Cable Association*, at 4, 7 n.19 (“ACA agrees with NCTA that the Commission should consider eliminating or limiting part-time leases, and permitting cable operators to establish minimum [8 hour] per day purchase requirements. Part-time leased access is a regulatory invention , and is in no way mandated by statute”)