

LEASED ACCESS PROGRAMMERS ASSOCIATION

June 4th, 2019

Ex Parte

Ms. Marlene Dortch, Secretary

Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: In the Matter of Leased Commercial Access Modernization Rules of Media Regulation Initiative: MB Docket #'s 07-42 and 17-105.

The Leased Access Programmers Association (“LAPA”) herein submits informal comments concerning the pre-released Report and Order and Second Further Notice of Proposed Rulemaking in MB Docket No. 07-42 and 17-105 and expresses its concerns regarding the proposed changes. Of particular concern is the proposal to eliminate the requirement to provide part-time leased access and giving the cable companies the right to impose a fee per system-specific application for leased access. While the rules adopted in 2008, by a pro-leased access Commission which included Chairman Kevin Martin and Commissioner Jonathan Adelstein were meant to encourage the use of leased access by reducing burdens on independent programmers that attempted to use it. The cable companies somehow managed to get the rules stayed in the Court of Appeals partially based on false logic. Now many years later, the Commission appears to be on the verge of swinging the pendulum the other way and adopting rules, that favor and coddles the cable companies and discourages the use of leased access by the people that it was intended for. The Leased Access Programmers Association was formed to represent the interest of the users of leased access. It does not have the resources to delve into the legal-mumbo jumbo that the NCTA , ACA and the cable companies have. Common sense needs to be part of the equation as well.

It was Congress that mandated the establishment of leased access to be utilized “as a genuine outlet for independent programmers to encourage diversity and other viewpoints that weren’t under the control of the broadcast and general media including the cable companies” Certainly, Congress didn’t envision at that time the explosion of other outlets such as satellite distribution and internet distribution of video programming. It was specific to the cable industry and the distribution by such. Cable is regulated by the FCC and by the city/county/political subdivision authorities who provide the franchises to operate in their area, in exchange for the use of public right-of-ways for its equipment and cables. It should be remembered that the FCC answers to Congress and not to the cable companies.

With that being said, the elimination of the requirement to provide leased access on a part time basis, is a giant step backwards for the use of leased access by independent programmers. Indeed the majority

of programmers are using it on a part time basis. As few if any, have the resources to provide numerous hours of programming on their own, let alone operate a full time channel. While we certainly don't expect the cable companies to bear the burden of providing leased access to a programmer that wants to run a half hour program once a week for a few months, we also don't expect that a leased access programmer needs to bear the burden of the expense of operating a full time channel just to run a few hours of programming on a regular basis and a full time channel is not feasible or justifiable. Remember the money flows to the cable company from the leased access programmer and not the other way around. The programmer already bears the burden of getting enough sponsors (advertisers) to pay for leased access, production costs and other expenses. Indeed, the leased access programmers already must bear the cost of providing liability and media E&O insurance for the benefit of the cable company.

There certainly was a reason that the Commission mandated the part time leased access requirements, most likely as it recognized that independent programmers were small businesses that simply wanted to develop programming for on a limited basis and within their resources and budgets and that the only way to encourage its use by such, was not to place such burdens on them to maintain a full time channel and that the cable companies were in a position to act as an aggregator and encourage many independent programmers to develop programming to fill a channel and ideally channels of independent programming. So indeed, if the Commission does eliminate the part time leased access requirement, what constitutes a full time channel? Is it then 24 hours and the cost of the channel totals that, even though only 4 hours of programming is feasible for that programmer to produce? The correct solution here is a happy medium that accommodates the concerns of the cable companies and the concerns of the programmers that so no one is unduly and unreasonably burdened. This must be defined and not left to the interpretations of the cable companies. Indeed, exactly what proof have the cable companies provided that they are so burden and losing so much money by having to offer leased access on a part time basis, other than crying their crocodile tears in their buddy to buddy meetings with the Commission? Indeed, the Leased Access Programmers believes that this matter should be tabled and opened to further comments from both sides, so that the Commission can get a more realistic picture of the situation.

Withstanding that, LAPA fully supports the comments and concerns submitted by the Small Business Network ("SBN") dated 5/29/19 and ask the Commission carefully consider them in any of their actions.

On the other matter of concern in the proposed Report and Order being considered by the Commission is to allow the cable companies to charge an application fee. Of special concern is just what an application consists of? Is it a submission of request for general information about the systems leased access policy and requires, what channels are available for leased access? The area which a system covers (geographically, cities, towns, zip codes) that the leased access channel would cover, the basic rates and the number of subscribers that would be covered by the channel and methods of delivery that are usable? Or would it be a more detailed application where specific technical matters, the request to put a contract together, usage negotiated, etc. LAPA feels that each cable company should have already established a leased access policy and put together basic information that could be made available in a pdf document, a spreadsheet or posted on a company's website that would answer the basic questions and give a prospective leased access user, the information necessary to determine if trying to proceed with leased access usage on the system is feasible, practical and advisable. Information that should be readily available should not be charged for. No business charges for information on its products, costs and availability in order to determine if someone wants to do business with them or not. The application fee should only be applied when a user wants to proceed with putting together a contract or needs

specific technical studies to be done or more detailed information is requested that requires an additional scope of work to determine the answer.

With respect to the response times that a cable operator will be allowed to respond for inquires for information, etc. and respond to “only bona fide” requests that the Commission is proposing to adopt. These seem to be overly generous for the cable companies and add additional roadblocks for the prospective leased access users; they are not unduly burdensome to discourage use of leased access. LAPA only comments that they are disappointing and do not reach for a happy medium for both cable companies and leased access users.

LAPA is also disappointed that the Commission wants to throw out the entire set of rules and changes adopted in the 2008 order and the benefits and reasoning behind them and not just address and fix the issues and concerns of the Circuit Court of Appeals and the OMB that led to the stay order. Indeed, the Commission ignored one of its main benefits, that a cable company should reasonably accommodate a request for geographically specific (targeted) leased access usage (such as a town, city, county, zone or other subdivision where it is technically feasible, such as a PEG channel (s) or other specialty channel (s) is provided and where its coverage is limited to a specific area. Indeed, LAPA encourages the use of leased access on a local basis that benefits the public and community and provides programming that enhances democracy.

LAPA encourages any simplification of leased access rates calculation, preferably to an easy to use spreadsheet, to eliminate burdens on the cable companies, as long as it does not unduly increase the costs for leased access usage.

LAPA encourages the Commission to recognize that its serves for the benefit of Congress and the public in general and not for the corporate community, necessity and welfare and adopt rules and regulations concerning leased access that encourages the use of leased access and provide an even playfield for both leased access users and cable companies that neither side is unduly burdened or benefitted from and that the general public is enhanced. It should be noted that one of the main advocate and champion for leased access usage, Charlie Stogner, founder of the Leased Access Programmers Association has passed away. His shoes will be hard to fill, but LAPA intends to carry on his vision that leased access is useful and beneficial to the American public.

Respectfully Submitted,

Duane Polich

Vice President
Leased Access Programmers Association

Cc: