Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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

REPLY COMMENTS OF LAPA IN THE SECOND REPORT AND ORDER

The Leased Access Programmers Association ("LAPA") here in submits informal reply comments to the filings of the above referenced proceeding. LAPA is a loosely organized trade association formed to advance the usage of leased access by independent video producers to benefit the American public.

LAPA fully supports the comments of Alliance for Communications Democracy ("ACD") and the Free Press ("FP") and opposes the comments submitted by NCTA-The Internet and Television Association. America's Communication Association ("ACA"), American's for Prosperity ("AFP"), Free State Foundation, ("FSF") and the International Center for Law & Economics ("ICLE").

The cable companies continue to whine, bitch, moan and complain like little children how the leased access rules as established by Congress in the Cable Act of 1984 is such a burden on the operations and how it takes away their editorial discretion on what and what not can be carried on their cable systems and their First Amendment Rights are being violated. Yet, they are happy taking money for it.

As duly noted, the leased access rules were established by Congress specifically "to promote and ensure the widest diversity of voices and interests for programming carried on cable systems". Only by insuring

free speech by the American public and access to the media, can American values and interests be achieved.

In its basic form the First Amendment establishes: The First Amendment guarantees freedoms concerning religion, expression, assembly, and the right to petition. It forbids Congress from both promoting one LAPA is all religion over others and also restricting an individual's religious practices. It guarantees freedom of expression by prohibiting Congress from restricting the press or the rights of individuals to speak freely. It also guarantees the right of citizens to assemble peaceably and to petition their government.

Nowhere in there does it say that the First Amendment gives the right to big business to control what the media may choose to disseminate or not to disseminate to the American public. Indeed the very basic foundation for American democracy depends upon the free flow freedom of expression of various viewpoints and not upon the whims and policies of big business, special interests and political organizations.

Indeed the Commission attempted to advance the interest of the American public and tried to carry out the wishes of Congress to reduce the roadblocks that had been established by the cable companies, inhibiting the usage of leased access by prospective programmers as intended by Congress, by adopting new rules, that would encourage its use. The Commission was subjected to legal challenges of how they would be and the cable companies obtained a "stay" from the Court of Appeals. Now almost 10 years later, the Republican led Commission does a 180 and enacts rules that favor the cable companies and adds additional significant burdens on prospective users. The elimination of the rule that cable operators had to offer leased access on a part time basis was absolutely ridiculous. Now the prospective users may be subject to the burden of having to pay for a full time channel, when a vast majority of them only has the resources to produce a few or limited hours of programming. Which means it will be next to impossible for them to use leased access, unless some company steps up to the plate and funds a full time channel and will have to seek programming from many different sources to full the time. These will be far and few in between. So has does this provide a public benefit? Indeed, leased access users should be entitled to the same relative arguments, used by the cable companies when it obtained its stay of the 2008 rules claiming undue harm to its business. In this came, leased access users should also claim undue harm to its business and seek its own stay of these new rules in the court of appeals. Indeed, where did the Commission take any action that would be of benefit to leased access users that the leased access provisions were intended for? Indeed, how does this action benefit the public interest

in its right to a free press and freedom of speech? Indeed, the action is solely for the benefit of the Cable companies and its special interests.

For far too long the Commission has “brown-nosed” the cable companies and in this proceeding continues to “spit” in the face of Congress and gives them the “proverbial” finger, by not following the instructions and wishes of Congress to make leased access viable and take it upon themselves to determine what they consider right and wrong. Only one logical conclusion can be established by such. In that the Commission has its hands firmly entrenched in the pockets of the cable companies. This can only be considered corrupt government. The Commission is legally bound to serve the interest of Congress and the American public in general and not the special interests of big business. It is noted how the voting in this proceeding was drawn along party lines. Each party must also serve the interest of the people.

What is well established here is, it’s not the Commissions place or perogative to determine anything to do with First Amendment Rights and whether the leased access rules are constitutional or not. This is only for the courts and ultimately Congress to decide. In the meantime it is the place of the Commission to carry out the directives of Congress and the people it serves in a fair and equitable manner, which is not biased on one side or the other and does not unduly cause harm to one party or another. In any case it should not rely on its own opinions and interpretation of such First Amendment Rights and Constitutionality of such in any of its regulations and determination until the courts and Congress have made a decision to the contrary of what has already been established. Indeed the Leased Access Rules as established by Congress, and any supposed First Amendment Rights and Constitutional challenges have already been decided and upheld by the courts. Now the cable companies, their lackeys and stooges come crying because they can’t control what can and cannot be carried over leased access channels and might made to carry what they don’t want to because of their own personal opinions, beliefs, policy whims and folly. How does not being made to do this serve the public interest? How does being able to control what programming is carried over leased access promote free speech? Indeed let’s look at what constitutes freedom of speech?

Freedom of Speech / Freedom of the Press

The most basic component of freedom of expression is the right of freedom of speech. The right to freedom of speech allows individuals to express themselves without government interference or regulation. The Supreme Court requires the government to provide substantial justification for the interference with the right of free speech where it attempts to regulate the content of the speech. Generally, a person cannot be held liable, either criminally or civilly for anything written or spoken about a person or topic, so long as it is truthful or based on an honest opinion, and such statements.

A less stringent test is applied for content-neutral legislation. The Supreme Court has also recognized that the government may prohibit some speech that may cause a breach of the peace or cause violence. For more on unprotected and less protected categories of speech see advocacy of illegal action, fighting words, commercial speech and obscenity. The right to free speech includes other mediums of expression that communicate a message. The level of protection speech receives also depends on the forum in which it takes place.

Despite popular misunderstanding the right to freedom of the press guaranteed by the First Amendment is not very different from the right to freedom of speech. It allows an individual to express themselves through publication and dissemination. It is part of the constitutional protection of freedom of expression. It does not afford members of the media any special rights or privileges not afforded to citizens in general.

However, discussion of First Amendment Rights, The Constitutionality of the Leased Access Rules, Freedom of Speech, Marketplace Competition, etc. are all irrelevant in this proceeding because the Commission does not have the authority to decide anything regarding to this. It is because of this that the Commission in elimination of the requirement for the cable operators to offer leased access on a part time basis, overstepped its authority as part of the justification of such decision was made in part that it would address some of the First Amendment Rights concerns of the cable companies. The Commission erroneously decided it had authority to decide First Amendment issues to a degree. Such action makes it nearly impossible for the many (let’s say majority of programmers that use leased access to do so, due to prohibitive costs of a full time channel that many do not have the resources for. They are now at the mercy of the cable companies to decide whether or not to carry their programming. The cable companies cried that they were losing money by having to offer leased access on a part time basis.

Where is the proof and examples where this has happened? The cable companies have provided none. What about the money they made from leased access. Clearly the fair and equitable approach that the Commission should have adopted, that benefits and addresses the concerns of both parties was not considered. This is just plain wrong.

LAPA is all for the simplification of the leased access rates, so that the rate may be determined by the use of spreadsheet or other computerized program, so long as the rate is justifiable and in accordance with rates being charged to other programmers and not subject to the whim and fancies of the cable company that may unduly restrict or discriminate against the users of leased access in its intended manner.

While cable companies complain that they should not be forced to carry programming that they do not want to or the public doesn't watch, what about the leased access programming that the public does want to watch, provides relevant and beneficial programming to the area the cable company serves. Such operators such as Hometown TV * Dillon, SC, Lakes TV Lake Ozark, MO, JTV Jackson, Michigan, Southern Crescent Broadcasting, McDonough, GA, Reewind Network, Reading, PA, DeTV Wilmington, DE, Detroit Lakes TV in Minnesota, Ridgeline TV Blairsville, NC etc that utilize leased access TV isn some manner. How would the public interest be served if these operators could not rely on established rules and be subject to the whims, follies, and prejudices of the cable companies to be carried or not, should the leased access rules be eliminated?

The cable companies complain that with increased competition they are excessively burden compared to their competitors and the business has severely eroded because of such competition and therefore, it should be relieved of its leased access obligations, support by its claim of First Amendment Rights violation. The cable companies have only itself to blame with its "rape and pillage policies" concerning rates, fees, etc. that the public got tired of.

In conclusion, the Commission answers to and works on behalf of Congress and the American people. It does not work for big business or special interest groups. Any rules and regulation should benefit the American public and not just one specific group. The Commission must consider the interests of all parties involved and govern in a fair and equitable manner. Failure to do so, will call for the exercise of our First Amendment rights to petition the government for change and call for its elimination or overhaul.

Respectfully Submitted,

Duane J. Polich

On behalf of the Leased Access Programmers Association