VISUAL MEDIA PRODUCTIONS, INC.

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May 6, 1996

Certified Priority Mail
P 547 766 122

Office of The Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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RE: Comments, in the Matter of

Implementation of Sections of the
Cable Television Consumer Protection
MM Docket No. 92-266 and Competition Act of 1992:
Rate Regulation

Leased Commercial Access CS docket No. 96-60

Please accept for formal filing in the above captioned matter the enclosed comments.

As instructed I have included an original plus (6) copies of our comments for your records.

Sincerely,
Visual Media Productions, Inc.

Marty Adamshick
Vice President

Enc.: (1) Original
(6) Copies

No. of Copies rec'd 0+6
List ABCDE

P.O. BOX 25004, ST. CROIX, U.S. VIRGIN ISLANDS 00824 TEL/FAX (809) 773-2270

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Leased Commercial Access CS docket No. 96-60

Visual Media Productions, Inc., a producer of video programming for distribution on commercial leased access channels submits the following comments for the Commissions consideration and review regarding the above docketed matter.

COMMENTS ON FURTHER NOTICE OF PROPOSED RULEMAKING

As a prelude to our reply, we ask the Commission to consider the impact and potential of a video future where 100+ cable TV channels is the industry norm. In fact cable's competition; Satellite Broadcast Systems, Multi-Point Multi-Distribution Systems, and Video Dial Tone Systems already boast channel offerings in excess of 100 channels. We believe that the resulting economic and competitive pressures created by these new programming distribution systems will motivate cable operators to increase their number of channel offerings in order to remain competitive.

We believe this expansion scenario is inevitable and should be encouraged by the Commission through adjustments in its rate regulations for commercial leased access programmers. It is our contention that operator technical/administrative costs for opening and operating set-aside channels, plus a reasonable profit, should be the only basis on which new rate calculations are made.

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This approach would expand program offerings and help eliminate a great deal of the implementation concerns contained in your notice of proposed rule making.

Also, it is clear that when Congress created and quantified special set-aside channels for commercial leased access they mandated that rates be reasonably priced in order to promote diversity of video programming.

It is our belief that these set-aside channels were reserved legislatively for the exclusive use of commercial leased access programmers. Even though provisions were made to allow cable operators to use unsold space for their own programming, they were doing this with the expressed understanding that their programming ran the risk of being bumped by leased access programmers.

We conclude that it is grossly unfair to require commercial leased access programmers to compensate operators presently using this capacity for lost advertising/commission revenue resulting in giving back channel capacity that was lawfully allocated for set-aside programmers.

Why can't operators simply open more channels for their programming that might get bumped, rather than requiring programmers to subsidize them for bumped channel losses? Not only is this unfair, but we believe it is in direct contradiction to the legislative intent of the leased access laws to provide a reasonably priced outlet for diverse video programming.

Implementing rules to promote channel expansion would certainly help increase the use of leased access, and would not impose financial hardship on the operator, since they would be able to recover all their real costs, plus a reasonable profit from the commercial leased access programer.

We believe this approach presents the Commission with an excellent opportunity to achieve Congress' goals: "to promote competition in the delivery of diverse sources of video programming in a manner consistent with the growth and development of cable systems."

Encouraging cable operators to add channel capacity to their systems, rather than "bumping" existing programming to accommodate commercial leased access set-aside channel requirements, would create a win-win situation for every one. The operator would not have to bump programming, and would be encouraged to expand in order to increase its competitiveness by adding more channels. The subscriber/consumer would get more

programming options for their buck. And the leased access programmer would have a genuine outlet for his/her programming at rates that would encourage set-aside use. All of which would achieve the Commission's mandate to encourage the use of set-aside channels based on the economic realities of the marketplace.

We hope the Commission gives these ideas due consideration in formulating its next round of rulings.

Also, we ask that the commission please clarify the regulations relating to technical and peripheral costs associated with offering commercial leased access. We are presently experiencing the deterring effects of an operator who is trying to charge us the complete up-front costs of opening up a set-aside channel. They are insisting that more than $15,000 be paid up front for equipment costs before any access will be provided to us.

This seems unreasonable to us, and when we looked to the regulations for guidance in this matter, we encountered the vague and contradictory wording of section 500 of your R&O and CFR Section 76.971 (c) regarding commercial leased access. How can a part-time programmer on a tight budget possibly fund the equipment costs of a complete channel just to air 4 hours of programming each week? This is not reasonable and a clear deterrent to gaining access for the "little guy."

We implore the Commission to please clarify this gray area of the law that cable operators are apparently using to deter access to their systems through exorbitant up front equipment/technical set-up costs. This is clearly in contrast to Congress' intent to promote access, and we hope you will address this issue in your next round of rulings.

COMMENTS ON NOTICE OF PROPOSED RULEMAKING

a. Economic Justification

65. We support rates that will promote set-aside channel use, and oppose rates that will allow space to go to the "highest bidder" when full set-aside requirements are met. This would contradict Congress' intent that rates remain reasonable to promote diverse
video programming.

66. We agree that rates should be based on the operators reasonable costs of providing a video delivery service, plus a

reasonable profit. However, lost advertising & commission revenues (opportunity costs) attributed to bumping channels to make room for set-asides should not be included in any rate calculation formulas. We also suggest the Commission quantify reasonable profits at costs plus 10-15% in order to avoid disputes over the reasonableness of operators profit margins.

This would assure operators a profit, and thus pose no undue financial burden. It would also create fair access rates for programmers since they would be paying only for those costs directly related to making channel access available to them.

We believe that in order to promote leased access, rates for unutilized set-aside channels have to be lower than what present rules require, and that this can be achieved by basing rates solely on operational costs, plus a maximum reasonable profit.

We oppose all cost pass-alongs to programmers that relate to "bumped" programming. Operators should be encouraged to open up additional channels for "bumped" programming, and if they decide not to for cost reasons, the leased access programmer should not be burdened with recouping the operators lost revenue. Operators knew these channels were reserved for commercial leased access, and that any programming revenues earned were at risk of being replaced by set-aside requirements.

73. We believe it was Congresses' intent to have reasonable rates created, and if rates are considered reasonable prior to achieving full set-aside capacity there is no reason to further enrich the operator with higher rates after its set-aside requirements are met.

We oppose market rate calculations when operators have fulfilled their set-aside requirements. Allowing rates to fluctuate such that only the wealthy programmers could gain access is in direct contradiction with your statutory mandate to establish reasonable rates, and create a genuine outlet for diverse video programming.

In the event of full-capacity we propose a lottery be created to fairly allocate space among programmers.

We also believe that if the programming is so successful that the programmer is willing to pay more for access, then it would make economic sense for the programmer and the operator to negotiate arrangements for channel access outside of the commercial leased access laws.

We oppose any option that would enable a cable operator to assert any editorial control over content. Congress was quite clear on this issue, and it would be a tremendous setback to encouraging diverse programming by permitting operators any role in screening/selecting programming.

74. We support this conclusion.

b. Designating Channels

75. We believe bumped channel opportunity costs should not be reflected in cost rate calculations for the reasons explained above.

76. We support a public file containing an operators specific set-aside channel selections, and believe operators should be able to revise it yearly.

We believe rate calculations should be based on using an average of the lowest opportunity costs (excluding bumped and lost revenue figures) for the operators lowest channel costs (excluding must carry and PEG channels) corresponding to the number of set-aside channels it is required to carry. For example, if the operator should have 5 set-aside channels, then the average of the lowest cost 5 channels on its system should be used to compute rates.

Basing rate calculations this way makes economic sense, since cable operators will likely bump the least profitable programming first. This would prevent operators from manipulating results, and give the programmer a fair rate. It would also eliminate concerns about using operator affiliated programming.

Also, it would encourage operators to open up more capacity instead of bumping existing programming.

c. Operating Costs

77, 78. We oppose any formula that forces the programmer to pay for lost revenues/commissions as explained above.

d. Net Opportunity Costs

79 - 83. We reassert once again our opposition to rate calculations including lost advertising & commission revenues.

It is unfair to require programmers to subsidize operators lost revenues for bumped or dark channels, because operators will be earning a reasonable profit from programmers based on using a real cost + profit formula.

Instead the Commission should encourage operators to avoid bumping channels and open up more channels, thereby achieving Congress' intention to increase the diversity of video programming.

84 - 89. Operators should be allowed to charge reasonable fees for technical costs involved with offering leased access programming, and we support this conclusion. These technical costs plus a reasonable maximum profit/markup of 10-15% should be used as the basis for calculating rate charges for leased access programmers.

Also, we believe it is imperative that the Commission provide clear guidelines relating to reasonable technical and set-up costs for offering commercial leased access that will not act as a deterrent to set-aside use.

Operators can presently favorably interpret and apply CFR Section 76.971 (c) and FCC Rate Regulation R & O 500 to create barriers to access by requiring programmers to pay entire equipment set-up charges before they can gain access. This is completely unfair and the vagueness of these rules encourages operator abuse.

Please, clarify this issue to prevent operators from using these sections to deter access to their systems.

e. Averaging the Per Channel Costs
for All Designated Channels

90-92. We believe rate calculations should be based on using an average of the operators lowest channel costs (excluding bumped and lost revenue figures) corresponding to the number of set-aside channels it is required to carry (excluding must carry and PEG channels). For example; if the operator should have 5 set-aside channels, then the average of the lowest cost 5 channels on its system should be used to compute rates.

Basing rate calculations this way makes economic sense, since cable operators will be likely to bump the least profitable programming first.

Also, this approach would prevent operators from manipulating results, and give the programmer a fair rate. It would also eliminate concerns about using operator affiliated programming.

F. Calculating the Leased Access Programmer Charge

93-94. We support provisions that would prohibit double recovery of costs.

g. Adjustment for Part-time Administrative Costs

95. If the Commission is going to permit operators to charge programmers for their time in negotiating P/T leased access, which we agree with. This charge should be reasonable and quantifiable.

If there is no clear formula specified for these fees how will a programmer know if they are being fairly charged? These charges should also be made available to programmers requesting initial information regarding pursuing leased access. We see potential for operator abuse unless clear guidelines are specified regarding this issue.

2. Market Rate as the Maximum Rate

96-97. We all agree that it was the intent of Congress to create reasonable rates, and if rates are considered reasonable prior to achieving full set-aside capacity, we see no reason to further enrich the operator with higher rates after its set-aside requirements are met.

We oppose market rate calculations when operators have fulfilled their set-aside requirements. Allowing rates to fluctuate such that only the wealthy programmers could gain access is in direct contravention with your statutory mandate to establish reasonable rates, and create a genuine outlet for diverse video programming.

In the event of full-capacity, we propose a lottery be created to fairly allocate space among programmers.

We also believe that if a programmer's programming is so successful that they are willing to pay more for access, then it would make economic sense for the programmer and the operator to negotiate arrangements for channel access outside of the commercial leased access laws.

We oppose any option that would enable a cable operator to assert any editorial control over content. Congress was quite clear on this issue, and we assert once again our strong opposition to any options that might allow operators any roll in selecting or screening programming.

3. Transition Period

98. We agree that on the effective date for new rate regulations operators should be required; to implement them immediately for new contracts, and be allowed 30 days to revise existing contracts.

99. We support your proposed transition period for only those leased access requests that require presently running programming to be bumped.

Dark channels however, should not be given this relief unless actual programming is scheduled to begin airing on the channel within 30 days of the effective date of your new rules.

4. Adjusting Leased Access Rates under the Cost Formula Over Time

100, 101. We agree that operators should be allowed to adjust their channel designations and rate calculations yearly. But only if they are switching to another channel that is less costly then the previous one(s) selected (excluding must carry and PEG channels).

This approach would be in keeping with economic reasoning, and prevent operators from attempting to inflate rates.

B. Part-Time Rates

102. We agree that part-time rates for a 24 hour time period should total no more than the maximum rate, and that operators, upon request, be required to supply programmers with a part-time rate sheet that conforms to the above formula.

E. Obligation to open new channels and bump existing non-leased access services

124. We believe that operators should be encouraged to open all leased access channels to accommodate programmers specific time slot requests. Why are these channels allocated if programmers can't use them upon request? Also, by not opening up a channel for a time request, you will be deterring other part-time programmers from getting on as well, since they will be told by cable operators that there isn't enough time being used to justify opening it, when in reality maybe there were a half dozen programmers looking for time that, when totaled up, could clearly justify the opening of the channel.

Also, just because a programmer wants 2 hours of programming on a set-aside channel that is presently airing something else, doesn't automatically mean that the whole channel needs to be bumped? Couldn't the operator insert the commercial leased access programer's show in their requested 2 hour time slot and keep the remaining 22 hours of non-commercial leased access programming?

If operators continue to air programming on set-aside channels they do it at their own risk, and programmers should not take a back seat to them. Please encourage the opening up of new channels as Congress intended.

In lieu of commission support for the above ideas, and in response to your tentative conclusion to support a minimum 8 hours out of 24 hour standard for opening up a channel. We would like cable operators to be required to keep a record of programmers who were denied the opening of another channel, and that this information be made available to other programmers inquiring about time, so that perhaps the programmers could get together and jointly reach your minimum time standard.

Also, please be specific in setting these minimum standards so there is no confusion. Is your 8 out of 24 hours for one day or for each day of the month? Obviously we would prefer the lower standard.

F. Selection of Programmers

127-129. When full set-aside capacity is achieved a lottery system should be devised for those programmers desiring full-time and those interested in part-time programming.

Also, we believe that 1 channel should be allocated for exclusive part-time use in those systems requiring 10% set-asides and 2 channels for systems requiring 15% set-asides. The Commission should define part-time programming, that would include a cap on the amount of programming a programmer could air on these special part-time channels.

H. Procedures for Resolution of Disputes

137,138. We support a reporting policy that would eliminate any question of reasonableness of rates by requiring operators to have an independent Certified Public Accountant verify annually the accuracy of the rates that operators supply to programmers. This would assure accurate price quotes and eliminate programmer complaints to the FCC regarding unreasonable rate calculations.

This report would not need to include any of the operators privileged proprietary information, and would merely give programmers the rates and an assurance statement by the independent CPA as to their accuracy.

The cost for the accountants fee should be paid by the operator, and the operator should be allowed to recoup this fee as part of its real channel operating costs.

As a programmer I would welcome the security of knowing that the the accuracy of the rates quoted to me were verified and sworn to by an independent CPA.

I. Resale of Leased Access Time

141. We oppose any rules enabling commercial leased access programmers, including not-for-profits, to resell their contracted time. This would encourage insincere programmers to grab up prime-time in hopes of making a speculative profit by reselling.

This would not encourage diversity of programming and set-aside usage, and would add a layer of unnecessary legislation to the rules.

We thank the Commission for its consideration of our comments, and wish them the wisdom of Solomon, as they work to fulfill Congress' mandate, to promote the delivery of diverse sources of video programming in a manner consistent with the growth and development of cable systems.

Sincerely,
Visual Media Productions, Inc.

Victor A. Gold
President

Marty Adamshick
Vice President