Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-266
	)	
Leased Commercial Access	)	CS Docket No. 96-60
	)	
To: The Commission		

COMMENTS OF MULTIMEDIA CABLEVISION, INC. AND SUSQUEHANNA CABLE CO.

Multimedia Cablevision, Inc. and Susquehanna Cable Co. ("Cable Companies"), by their attorneys, hereby submit their comments in response to the Commission's Further Notice of Proposed Rulemaking ("FNPRM") in the above-referenced Leased Commercial Access proceeding.[1]

I. INTRODUCTION AND SUMMARY

Multimedia Cablevision, Inc. is a multiple system cable television operator serving over 460,000 subscribers in Illinois, Indiana, Kansas, North Carolina and Oklahoma. Susquehanna Cable Co., a 147,000 subscriber MSO based in York, Pennsylvania, has a system serving 66,600 subscribers in York and vicinity as well as smaller systems in Maine, Mississippi, Indiana and Illinois. Because of their desire to bring as a wide variety of quality programming services as possible to the communities

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[1] In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992; Rate Regulation; Leased Commercial Access, MM Docket No. 92-266 and CS Docket No. 96-60, FCC 96-122 (rel. March 29, 1996).

they serve, both Cable Companies have added many new networks over the years. As a result, they currently have only limited amounts of free channel capacity. Thus, the Cable Companies are troubled over a possible torrent of demand for leased channels resulting from proposed changes to the leased access rate formula, and with the impact such demand will have on their systems and their subscribers.

The purpose of these comments is twofold: (1) to demonstrate that the Commission's proposed "cost market" formula for determining leased channel rates will force the Cable Companies' systems to make channels available to commercial lessees with little or no compensation; and (2) to support alternatives that produce more reasonable, compensatory rates, minimize disruption of existing channel line-ups, allow cable operators essential flexibility in placement of leased access programming, and require a minimum commitment (both in hours per day and duration of lease) for part-time users before a system must make an additional channel available.

II. CHANNEL LEASE RATES UNDER THE "COST/MARKET" FORMULA

The FNPRM expressly disavows the intention of reducing leased channel rates as the primary goal of the proceeding.[2] Application of the proposed formula to the situations existing at several of each Cable Company's systems revealed that the "cost/market" approach not only would reduce rates, but would virtually eliminate the system's ability to charge for leasing channel space. In fact, as demonstrated in exhibits hereto, channel lease rates would be a negative number.

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[2] FNPRM at ¶ 24.

As noted above, channel capacity at the Cable Companies' systems is either full or nearly full. Thus, they could accommodate an increase in demand for leased channels only by deleting existing services. The Cable Companies' decision as to which channels will be designated for deletion is based on a variety of factors; one of the least significant is channel profitability in terms of direct revenue production. Of far greater import are factors such as which channels a system is free to remove under existing contractual carriage obligations and which channels are least popular with the majority of cable subscribers.

For the Cable Companies' systems, channels likely to be designated for deletion tend to lack significant revenues of the type recognized under the current proposal as "lost opportunity costs." In the example set forth in Exhibit 1, the designated channels' includable opportunity costs are zero, and two of the three channels impose license impose license fees on the system. Thus, under the proposed formula, the cost of leasing a channel capable of reaching 96,000 subscribers is a negative number, and the system would recover nothing from the channel lease.[3]

Exhibit 2 contains another sample calculation including designated channels currently carried on both the basic and expanded tiers. Because the designated basic channels have no includable lost opportunity costs but some do have license fees, the "cost/market" formula would produce a negative result, and the system could recover nothing from leasing a channel on basic. Although there are some includable lost opportunity costs associated with the expanded tier designated channels, they are

[3] Under the current formula, a lease for the same channel costs $91.75 per hour, or $66,000 per month.

minimal. The system therefore could recover only nominal amounts -- $2.45 per hour or $1700 per month, which is far below what either an hour of time or an entire channel capable of reaching in excess of 66,000 subscribers is worth to the system or in the marketplace.

The Cable Companies believe that such low channel rates grossly understate their true lost opportunity costs in giving up channels to leased commercial access. Cable operators choose and package the channels they carry very carefully, in an effort to retain the loyalty of existing subscribers and to attract new ones. This entails considerable investment in promoting the program services carried on their systems. If an existing service must be dropped, much of the operator's investment in promoting that service will have been for naught. Moreover, when channel capacity is limited, the replacement of popular channels with less attractive programming -- or the addition of unattractive programming instead of channels subscribers have requested -- detracts from the overall value of cable service as perceived by the cable system's customers. These dissatisfied customers are likely to move to competing services such as DBS, wireless or SMATV systems, which are present in many of the Cable Companies' service areas and which are not subject to comparable leased channel requirements.

Although the FNPRM acknowledges the existence of such costs, they are not included in the proposed formula because they are difficult to quantify.[4] The Cable Companies respectfully submit that this is a major flaw which compels the Commission to seek an alternative approach.

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[4] FNPRM at ¶¶ 118-120.

III. IMPACT OF THE PROPOSED FORMULA ON CHANNEL LINE-UPS AND SUBSCRIBERS

Despite the failure of leased access usage of cable channels to develop to the extent anticipated,[5] television programming in this country is more plentiful and diverse today than it has ever been.[6] As a result of cable systems operated by the Cable Companies and other small and medium-sized MSOs, many communities outside the major metropolitan television markets enjoy programming choices as numerous and as varied as viewers in large cities.

Yet if the leased access rules are modified as proposed in the FNPRM, the existing level of diversity actually will decrease. Because contractual carriage obligations or regulations prohibit systems from dropping many of the programming services they carry, the Cable Companies would look first to channels not subject to such requirements. Among such "droppable" programmers would be local origination channels. These channels, which the Cable Companies provide as a public service, are the only source of popular, community-based programming such as high school football and basketball games, political candidate forums, fund-raising telethons and auctions for local charities, and coverage of local cultural and civic events such as parades or

[5] The Cable Companies submit that more channel leasing may exist than the Commission is aware. Since 1974, Multimedia Cablevision, Inc. has had a number of lessees who have paid the current rates for channel time to present a variety of programming, including advertiser-supported sports and entertainment, ethnic programming, and the most frequent type of usage -- infomercials. Susquehanna Cable Co., too, has leased channels at the current rate.

[6] In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Second Annual Report, CS Docket No. 95-61, FCC 95-491, at ¶ 150 (rel. Dec. 11, 1995).

concerts. Other vulnerable channels would include program services that have limited, albeit dedicated, viewership - C-SPAN, BET, Canal Sur (Spanish language programming) and Comedy Channel, for example. Another possible way to make room would be to delete similar types of channels (VH-1 if MTV is carried, CNN Headline News if CNN is carried, C-SPAN-2 if C-SPAN is carried). If the requests for leased commercial access that the Cable Companies have received to date are any indication, many such channels will be replaced by channels consisting entirely of program-length commercials.

Although upgrades and expansion of channel capacity are being planned by both Cable Companies, channel capacity cannot be increased immediately. If policies in the FNPRM are adopted as proposed, it will be impossible to avoid a major upheaval in channel line-ups. Deletion of any existing programming service from a cable system always provokes a strong, adverse response from at least some of the system's subscribers. This may occur immediately, as the system's customer service representatives are inundated with calls, or gradually, as unhappy subscribers cancel their service.

IV. RECOMMENDATIONS

The Cable Companies strongly urge the Commission to reject the "cost/market" approach in favor of a fairer, less extreme approach. The problems and concerns pointed out above could be eliminated or greatly reduced through adoption of rules with the following features:

1. A formula that does not result in understated charges that do not reflect the full value of channels;

2. A more gradual transition period to new rates;

3. Measures such as grandfathering of existing services or special relief to minimize excessive bumping of popular or valuable programming;

4. Determination of channel positioning of leased access programming by the operator, subject to negotiation with parties requesting channel leases, in lieu of automatic lessee entitlement to placement on basic or expanded tiers; and

5. Reasonable limits on set-asides for part-time leased access. Systems should not be forced to open additional channels for part-time leased access that can be reasonably accommodated on existing leased channels that are not fully occupied. In addition, to warrant opening an additional channel, a part-time channel lessee should be required to lease a minimum amount of time (at least eight hours per day, as the Commission suggested[7]) for a reasonable duration.

V. CONCLUSION

With the emergence of alternative multi-channel programming distributors, the Cable Companies already are under competitive pressure to add attractive new services to their channel line-ups as quickly as possible. A sudden increase in demand for limited channel capacity by leased commercial access programmers will deprive the Cable Companies' systems of the opportunity to be more competitive. In fact, systems' competitive position will become even more precarious if they are forced to remove popular existing networks in order to accommodate lessees whose programming lacks comparable audience appeal.

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[7] FNPRM at ¶ 124.

The Act is clear that leased access is to be "consistent with growth and development of cable systems' 47 U.S.C. 532 (a). Moreover the Act insures that the provisions and conditions for eased access must be "at least sufficient to assure that such use will not adversely affect the operations, financial condition, or market development of the cable system." 47 U.S.C. 532 (c)(c)(1)." Yet, from the Cable Companies' perspective, the proposals and tentative conclusions in the FNPRM seem destined to have just such an adverse effect. For these reasons, the Cable Companies urge the Commission to adopt a less disruptive approach with ample time for a smooth transition, protections against excessive program displacement, continued flexibility in channel positioning and a sensible, fair policy toward part-time usage.

Respectfully submitted,

MULTIMEDIA CABLEVISION, INC.
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By: ______________________

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May 15, 1996

Leased Access Rates under 3/29/96 FNPRM
Oklahoma Region
Multimedia Cablevision Inc.

EXHIBIT 1

Basic Tier

Designated Channels **	Channel 1	Channel 2	Channel 3	Total
Average Subscriber Revenue Per Tier ($19.09/35 channels)	0.545	0.545	0.545	
Net Lost Opportunity Costs	0.000	(0.110)	(0.052)	
Total	0.545	0.435	0.493	
Times number of subscribers	98,220	98,220	98,220	
	$53,572	$42,768	$48,465	$144,804
Divided by the number of set aside channels				3
Maximum monthly rate for full time channel				$48,268

Rate to be charged to leased access programmer:	Channel on Basic Tier
Maximum amount per month	$48,268
Less Avg. Sub Revenue Received (.545*98,220)	($53,572)
Monthly Fee to Programmer	($5,304)
Hourly Rates	($7.37)

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EXHIBIT 2

Susquehanna Cable Co
Cable TV of York - York Headend
Proforma of Leased Access Rates
5/14/96

Key Assumptions	
Economy Basic Rate	9.55
Economy Basic Channels	18
Economy Basic Subscribers	60,646
Expanded Basic Rate	11.80
Expanded Basic Channels	25
Expanded Basic Subscribers	58,835
Total Channel Capacity	55
Total Activated Channels	54
Must Carry Channels	6
Retransmission Consent Channels	3
Activated Less Must Carry Channels	48
Set Aside for Leased Access	5

Note:
Net lost opportunity costs shown below as a negative amount represent cost savings (i.e. license fee savings) from dropping the channel net of lost advertising revenue.

Net lost opportunity costs shown below as a positive amount represent lost commissions from a bumped shopping service or lost advertising revenue.

Designated Channels	Channel 1	Channel 2	Channel 3	Channel 4	Channel 5	Total
Average Subscriber Revenue Per Tier	0.531	0.472	0.472	0.472	0.472	
Net Lost Opportunity Costs	0.063	-0.063	0.032	-0.021	0.064	
Total	0.593	0.409	0.504	0.451	0.536	
Times Number of Subscribers on Tier	60,646	58,835	58,835	58,835	58,835	
	35,970.07	24,063.52	29,652.84	26,534.59	31,564.12	147,785.13
Divided by Number of Set Aside Channels						5
Maximum Monthly Rate for Full Time Channel						$ 29,557.03

Rate to be Charged to Leased Access Programmer:	Channel on Economy Basic	Channel on Expanded Basic
Maximum Amount Per Above	$ 29,557.03	$ 29,557.03
Less Avg. Subscriber Revenue That We Receive	(32,203.03)	(27,770.12)
Monthly Fee	(2,646.00)	1,786.91
Hourly Rates	$0.00	$2.45