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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

| Re: | In the Matter of<br>Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses |
|---|---|
| | GN Docket No. 96-113 |

Dear Mr. Caton:

Transmitted herewith on behalf of Blab Television Network, Inc. are an original and eleven (11) copies of its Comments and Motion for Leave to File Late Comments in the above-captioned proceeding as directed to the Commission.

Should any additional information be required, please contact this office.

Very truly yours,

Henry E. Crawford
Counsel for
Blab Television Network, Inc.

cc: The Commission
The Office of Communications Business Opportunities

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BEFORE THE

# FEDERAL COMMUNICATIONS COMMISSION

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|---|---|
| In the Matter of<br><br>Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses | GN Docket No. 96-11 |

To: The Commission

## COMMENTS OF THE BLAB TELEVISION NETWORK, INC.

The Blab Television Network, Inc. ("Blab TV"), by counsel, pursuant to the Commission's May 21, 1996, Notice of Inquiry ("NOI"), respectfully submits its Comments of the Blab Television Network, Inc.[1] In support thereof, the following is stated:

### I. Commercial Leased Access Programming Is An Excellent Small Business Opportunity

#### A. Leased Access Entrepreneurs

1. There is no better small business opportunity in the communications industry than that presented by commercial leased access programming. Leased access programmers create commercial programming for cable channels that are leased from cable television systems. Leased access

[1] Blab TV is aware that the comment period officially closed on August 23, 1996. However, Blab TV is simultaneously filing a motion to file these comments out-of-time.

program developers are small businesses that reflect the diversity found in the local communities in which they are found.

2. Leased access programming provides a realistic way for small entrepreneurs to participate in communications. Prohibitively large amounts of capital are not required. Although the leased access programmer must invest in modern television production studios, there are no high infrastructure development costs. This makes leased access programming much more viable for small businesses than capital intensive PCS networks. Additionally, developing local television programming makes the most of the local business person's knowledge and experience. Consequently, when compared with PCS, there is far less likelihood of sham corporate structures and/or fronts for foreign investment sources. Nor does leased access programming rely on unproved or unavailable spectrum technologies. Instead, local entrepreneurs use their unique knowledge of the community to present commercially viable video programming tailored to the needs of the individual community.

**B. Blab TV Demonstrates The Opportunities Available For Small Businesses In Commercial Leased Access Programming**

3. As a commercial leased access programmer, Blab TV presents live local television programming. Blab TV's local, talk format allows viewers to discuss issues involving local legal institutions, local cuisine, and local gardening techniques. Over the past year, Blab TV has provided programming to 11 law firms, 8 physician groups, 10 realtors, 6 used car dealerships and 3

garden centers. Blab TV estimates that a full 5% of the adults living within its metropolitan area have actually appeared on Blab TV at one time or another.

4. Local leased access programming creates local jobs. An operation such as Blab TV may employ up to 40 individuals. These are high quality sales and technical jobs. If the Commission were to eliminate market entry barriers for these programmers, local outlets like Blab TV would spring up all over the country in every cable system, greatly adding to the pool of high quality jobs. Moreover, the small businesses that are showcased on local leased access television would be able to compete more effectively against national competitors, thereby ensuring even more high quality local jobs.

5. In terms of small businesses, commercial leased access programming bridges a gap that cannot be filled by national cable outlets. It provides an otherwise nonexistent source of television advertising. Blab TV typically sends out over 300 invoices to community based businesses. This is generally far more than the amount sent to local businesses by cable or broadcast television operations. Blab TV achieves renewed business from local small concerns at a rate over 70%. Significantly, the majority of these local merchants have never participated in television before.

6. In addition to the obvious commercial benefits of leased access programming, Blab TV has provided invaluable community service benefits. Low leased access rates allow the presentation of extended political discussion. Many candidates for public office prefer advertising on Blab TV because of its community orientation. Voters typically call in and express their opinions directly

to candidates. Additionally, civic and community based groups purchase time on Blab TV because of its community oriented viewership. Blab TV is preferred even where the community organizations are given free time on the public access channel.

**C. The Congressional Mandate For Leased Access Programming**

7. Congress has long recognized the public interest in leased access programming. As stated in 47 USC §532:

> (a) The purpose of this section is to promote competition in the delivery of diverse sources of video programming and to assure that the widest possible diversity of information sources are made available to the public from cable systems in a manner consistent with growth and development of cable systems.

Despite this clearly worded congressional mandate, commercial leased access programming is almost virtually nonexistent. Unfortunately, the present regulatory structure presents nearly insurmountable market barriers to leased access programming.

**D. The Commission Is Required To Identify And Eliminate Market Barriers Faced By Small Businesses**

8. The 1996 Telecommunications Act requires the Commission to identify and eliminate market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services.[2] The Commission interprets "market entry barriers" to include obstacles that deter individuals from forming small businesses, barriers that impede entry into the telecommunications market by existing small

businesses, and obstacles that small telecommunications businesses face in providing service or expanding within the telecommunications industry.[3]

9. In identifying market entry barriers, the Commission has stated its intention to look into barriers arising from other FCC licensees as well as the policies of the FCC itself.[4] Furthermore, the Commission specifically noted the intent of Congress in the 1992 Cable Act to create small business opportunities in the area of commercial leased access programming.[5]

10. The leased access provisions of the Cable Act of 1992 and the small business provisions of the 1996 Telecommunications Act operate together to form a strong presumption in favor of creating a positive environment for the growth of commercial leased access programming. Where market barriers to leased access programming are found, they must be eliminated.

## II. Market Entry Barriers To Leased Access Programmers

### A. The Regulator Structure

11. A leased access programmer creating a business plan needs to know how much it will cost to lease the channel. According to the Cable Act, operators are required to charge a statutory reasonable rate. However, in accordance with the Commission's Rules, that rate can only be calculated by applying an extremely complex economic formula. As is readily seen in the filings submitted by the cable operators in the Commission's leased access

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2 NOI, p. 2, ¶1.
3 NOI, p. 4, ¶4.
4 NOI, p. 20-21, items 3, 8.
5 NOI, p. 16, ¶21.

dockets, these economic speculations can only be understood or explained with the help of professional economists and consultants.

12. Even if the potential leased access programmer attempts to compute the rate from the formula, he or she will not get very far. The facts that form the basis of the economic assumptions involve the operator's expenses and revenues and are within the exclusive control of the cable company. Most operators consider this material to be proprietary and will not release the information. Consequently, the economic formula is virtually useless in actually computing the rate that a prospective leased access programmer will have to pay.

13. This leaves only litigation before the FCC as a viable way to obtain a reasonable rate from a cable operator. Here again, the deck is stacked against the leased access programmer. Nationally based cable operators have a powerful lobby at the Commission and an army of lawyers, consultants and economists to protect their interests. Leased access programmers do not.

14. Even if the leased access programmer is successful in one proceeding, the rate determined in that litigation applies only to one cable system. A business plan that involves more than one system would require a separate litigation for each system. In any event, it is a poor policy that requires a small business to begin its business partnership with the cable operator by engaging in litigation at the FCC.

15. From the above, it should be clear that under the present regulatory framework, prospective leased access programmers cannot create

sensible business plans. The complexity of the rules and the inaccessibility of the underlying information make it next to impossible to actually determine if a given rate is "reasonable" in terms of the statute. Consequently, as a direct result of these market entry barriers, leased access programming has not become the source of competitive and diverse programming that Congress intended.

**B. Cable Operators Are Allowed To Charge Leased Access Programmers Artificially High Rates**

16. Given the complexity of the regulatory structure, its should come as no surprise that leased access programmers are faced with artificially high carriage rates. Under the present rules, cable operators are allowed to charge leased access programmers the "highest implicit fee." As Blab TV has discovered, that can mean rates as high as $280,000 per month in communities as small as West Columbia, South Carolina. Moreover, since the formula is based on facts exclusive to the operator, rates vary widely and in almost every case rule out the development of commercially viable leased access programming.

17. Blab TV is one of a handful of leased access programmers that have been commercially successful. Blab TV has over 12 years experience in commercial leased access programming. Based on this experience, Blab TV has found that local programming must begin with initial leased access rates in the range of 4¢ to 8¢ per subscriber per month. Blab TV's experience has demonstrated that higher rates are not commercially viable for local origination

programming. Unless the Commission establishes fixed, flat rates in the range of 4¢ to 8¢ per subscriber, commercial leased access programming cannot be successful.

**C. A Low, Across the Board Fixed Rate Would Eliminate Market Entry Barriers And Protect Both Programmers and Cable Operators**

18. Blab TV's proposed fixed rate of 4¢ to 8¢ per subscriber per month would be sufficient to create an environment for quality leased access programming. In order to avoid litigation and bring simplicity to the process, Blab TV proposes that this rate serve as a rebuttable presumption, which could only be overcome by specific evidence brought forward by the cable operator that the leased channel is not paying its way. This simplified regulatory approach would open the door to a new and vital communications industry while protecting the cable operators.

19. Blab TV's rate system would reduce or eliminate a number of issues presented by leased commercial access programming. Responsible entrepreneurs will be able to develop rational business plans by knowing in advance what the leasing costs will be. There will be no confusion and no way to use rates to keep out local programming. It will allow programmers to focus on product, not litigation. The operators will be relieved of administrative burdens, while maintaining an adequate remedy before the Commission. Operators will be allowed to protect the confidential nature of their business information, having the discretion to disclose it only if they believe that a higher rate is worth pursuing at the Commission.

20. A fixed rate system will allow the leased access programmer to have as much knowledge and consistency in following a business model as that enjoyed by the cable operators in purchasing programming from national sources at established rates. In terms of FCC litigation, such a system would place the decision to litigate in the hands of the party best suited to make that decision—the operator.

**III. Conclusion**

21. Since the enactment of the 1996 Telecommunications Act, we have witnessed only mergers and mega-mergers. The major telecommunications companies have gotten bigger and consumers have not experienced lower rates or increased levels of service. Here is one place where the Commission can take positive steps to help small businesses and local communities. Therefore, it is important for the Commission to eliminate any and all market entry barriers that stand in the way of leased access programmers and the benefits they bring to local communities. The elimination of market entry barriers means developing simplified rules in favor of complex formulas and providing for rates in the range of 4¢ to 8¢ per subscriber per month.

**WHEREFORE**, Blab Television Network, Inc. respectfully requests that the Commission provide relief to leased access programmers by eliminating the existing market entry barriers.

January 3, 1997

Respectfully Submitted,

Blab Television Network, Inc.

By: _____
Henry E. Crawford
Its Attorney

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CERTIFICATE OF SERVICE

I, Henry E. Crawford, do hereby certify that copies of the foregoing Comments of the Blab Television Network, Inc. have been served by United States mail, postage prepaid this 3rd day of January, 1997 upon the following:

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