COMMENTS REGARDING FCC 07-18:
In the Matter of Leased Commercial Access:
Development of Competition and Diversity in Video Programming Distribution and Carriage

INTRODUCTION

Our small independent programming company is currently in negotiations with our local cable company, CentraCom Interactive in Fairview, Utah. We are currently awaiting our quote from them. We appreciate the FCC's attention to the leased access channel issue, and feel that it has been of help in our current situation. In considering issues related to leased access channels, several possible improvements have occurred to us, which we hereby respectfully submit.

ON PAYING FOR LEASED ACCESS

It has been argued that independent programmers seeking to broadcast on a leased access channel should pay for that access, even though this reverses the traditional financial relationship between programmer and cable company.

The reversal of the payment arrangement is said to be due to "indirect" costs all programmers experience, even when being paid directly by the cable companies.

If indeed some costs and payments between programmer and cable company are indirect, then perhaps reimbursement for leased access could be made indirectly, at least in part.

In support of this approach, we observe that commercial TV stations -- including those on leased access channels -- are purposefully designed to benefit their audiences as much as they can, performing a valuable public service in order to attract the maximum viewership, and in turn offering their advertisers the greatest possible access to their communities.

Leased access commercial stations primarily serve a specific and local audience of cable viewers -- generally, a small, "super-local" subset of a given DMA. Thus, leased access stations are more able and likely to aim to serve the specific, niche interests of their chosen local audience. It could be argued that successful leased access-based stations are likely to offer, in their specificity of programming, a greater value to their limited audience than a typical commercial station does, which by comparison, targets a broader audience in arguably a more "shallow" manner.

In so richly serving the public interest, whereas PEG stations receive financial support through direct governmental support, perhaps leased access-based stations could receive indirect financial support from the government.

We propose that a portion of the "indirect" costs incurred by independent programmers be subsidized with cuts in the taxes paid by those cable companies which support leased access channels. Specifically, we propose that a percentage of the amounts that otherwise would be paid by independent programmers be deducted from the total tax burden expected to be paid by the specific cable company.

Benefits to this plan could include increasing the eagerness of cable companies in seeking and supporting leased access channel requests. Also, with lower costs, the financial burden of independent programmers would be reduced, likely increasing the total number of leased access programmers.

Further, in a competitive marketplace, these savings would likely be passed on to advertisers. This plan would thereby reduce advertising costs for businesses and other organizations. Since it appears likely that small businesses would primarily be drawn to advertise on these "super-local" stations, these savings could have a very positive impact on local communities and the small businesses which support them.

A possible downside for tax cut-subsidized leased access payments may be that some would feel the bar for entry for independent programmers would be too low, perhaps flooding the cable companies with independent programmers. In response, first, this cannot occur since the FCC's leased access program is already limited to 10-15% of a cable company's channels. Second, an over-abundance of leased access station requests seems unlikely since the additional financial costs, expertise, and time required to operate such stations already present a very high bar for programmers to hurdle -- especially for new, "super-local," independent programmers. Third, with growing broadcast technology refinements -- for example, in improved codec quality and reduced bandwidth requirements -- current limits on total numbers of stations available to cable systems may be increased. Fourth, the limited geographic size of a given cable company's network limits the potential advertisers which leased access stations could draw revenue from to support their operations, likely limiting the number of applicants. Finally, it may seem wise to propose a solution for leased access stations' overwhelming success when -- and if -- such problems actually arrive.

ON THE PAYMENT FORMULA

While the current formula established by the FCC for cable companies to assess charges for independent programmers to lease a channel on their networks has no doubt been successful for a few, some problems have apparently arisen, and where problems exist, there may be room for improvement.

A portion of the problems may stem from the complexity of the current formula. For example, our local cable company (CentraCom Interactive in Fairview, Utah) has told us that our request for a leased access channel would take a full 30 days to calculate. This delay, while understandable, has placed a strain on our meager resources. Simplification of the formula, it seems, would be welcomed by all involved.

Another portion of the problems in the current program may stem from the approach whereby cable companies apparently give individualized, unsupervised quotes to each programmer. Other government-supported monopolies are rarely, if ever, allowed to give specific quotes to their customers. For example, small businesses are not required to get individualized quotes for postal, natural gas, or electrical services, even though the direct and indirect costs of delivering those services to specific locations may vary. If such a process were required for these monopoly-delivered services, many business owners might view their quotes as suspect, expect them to increase, or view the service provider as less "fair" overall. In each of these markets, flat rates have proven to be the "fairest" approach (in terms of perception and reality), and thus best for all involved.

Cable companies often keep customer rates fixed at the original sign-up rates, even if costs are reduced over time, and even if lower rates are offered to new customers in the future. We do not contest this approach. However, it could be argued that since cable companies typically charge the highest possible rates to their subscribers, they are also likely to charge the highest construable amounts for leased access channels.

This oft-alleged approach of cable companies charging the highest possible prices to independent programmers appears to have reduced the total numbers of leased access channels, contrary to the interests of viewers and programmers alike. This has also likely impacted cable companies negatively, in that they currently may offer fewer channels to their customers than they might have been able to otherwise, had leased access channel-based stations been encouraged to proliferate more.

Thus, we propose that flat rates, with specific amounts per subscriber, be mandated by the FCC, similar to how pricing is regulated with other government-approved monopolies (e.g., postage rates).

Granted, cable companies differ in terms of numbers of subscribers, the rates they charge their subscribers, the size of communities they serve, whether the cable company experiences savings-per-subscriber by being part of a larger conglomerate (rather than operating wholly independently), and so forth.

In response, we suggest that tiers be set for smaller and larger cable companies, with flat rate amounts taking in consideration the average direct costs these companies experience, as estimated by the FCC.

If costs per subscriber would be higher for smaller cable companies (versus larger ones), we suggest that the percentage of the aforementioned tax cuts be increased for smaller cable companies' leased access channels.

Further, we suggest that the flat rate be set fairly low to encourage leased access based-stations to proliferate, since they already face high costs in developing their programming. For example, 10 cents per subscriber could be charged programmers for leased access channels on smaller tier cable companies, and 25 cents for larger cable companies, with the number of subscribers calculated annually, on a specific date. We propose that tax savings be offered to cable companies based upon the difference between the flat rate and the actual costs incurred by that specific company, based upon FCC estimates.

If the FCC proposes a formula for calculating the actual costs of each leased station to each cable company, the approach proposed above would shift the burden of enforcing the accuracy of cable company estimates from the shoulders of independent programmers (and/or the FCC), to the Internal Revenue Service. We observe that the IRS may be more experienced at verifying financial estimates than others, and may be better positioned to enforce remedies when discrepancies appear.

ON THE VALUE OF LEASED ACCESS CHANNEL PROGRAMMING

It has been suggested that some leased access channels could provide a negative value to the cable company's offerings, and thus that leased access channels should not be encouraged.

However, programming tiers are, in practice, priced according to the total number of channels. No viewer watches each and every channel in their programming tier in equal amounts. Yet even when deeply-held opinions or beliefs are questioned -- for example, by a religious broadcaster -- the pricing of each tier remains directly related to the total number of channels made available in each tier. While viewers may find certain channels' programming unappealing, prices for each tier -- and thus revenues garnered by cable companies -- are not reduced to accommodate any offended viewers.

Perhaps the "negative value" assertion was in reference to infomercial programming. We concede that shopping channels are of value to many viewers. However, in the case of full-time channels which primarily broadcast infomercials, we suggest that a percentage of income generated from those sales be shared with cable companies, at a rate determined by the FCC. Thus, the supposed decreased value of a programming tier could be negated, and perhaps, leased access would become largely reserved for programmers with the greatest interest in serving the public good.

ON REPORTING AND PROGRAMMING REQUIREMENTS

Since "super local" leased access channel-based programmers are likely to be limited in staff, finances, and legal experience, and to clear away fear, uncertainty, and doubt in entering this market, we suggest that the FCC make very clear statements about leased access based-stations' FCC reporting and programming requirements, if any.

We again wish to express our sincere appreciation to the Commissioners, and to their staff, for their interest and support in the leased access channel issues. Thank you.

Sincerely,

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