

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Leased Commercial Access) MB Docket No. 07-42
)
Development of Competition and Diversity in)
Video Programming Distribution and Carriage)
)
)
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To: The Commission

COMMENTS OF REYNOLDS MEDIA INCORPORATED

1. Introduction and Background. Reynolds Media Incorporated and its founders, (“RMI”), have been providing leased access programming to the Harrison, Arkansas cable system since the early 90s. RMI is also the licensee of two low power television, (“LPTV”), stations, K07XL in Mountain Home and K26GS in Mountain Home (license)/Harrison (construction permit), Arkansas. We hope to offer suggestions and insight to better the leased access process. We believe leased access is a valuable tool that allows programmers a way to distribute diverse locally-originated programming to viewers in the community that may not otherwise benefit from local culture, news, and information through current television sources.

2. There seem to be two types of program providers that take advantage of leased access. The first are individuals that simply want to provide programming to the viewers of the local cable system. The second are LPTV stations that do not have must-carry rights.

3. Generally, program providers with LPTV licenses that lease access qualify for “Class A”, but are not considered for must-carry because of current FCC regulations that exempt them due to an existing full-power television station licensed in the same county as the cable operator. We’ve found this situation commonplace where a full-power station licenses in a nearby county or just across the state line typical to where the other full power stations are licensed, however close enough to still be within the same Demographical Marketing Area (DMA) and provide adequate signal to the cable station in the core county. In other words the high power station doesn’t actually serve the community they are licensed. The full power station will announce their call letters and community of license at the top of the hour, but this may be the only mention this community receives during broadcasts. This practice is detrimental to the lease access programmer and LPTV operator because without the provisions of must-carry, the program provider is met with unreasonable fees and legal roadblocks preventing them from serving the area where they live and want to serve.

4. The Cox cable system, (“Cox”), in Harrison currently provides one leased access channel, channel 6, on their basic tier of services and no PEG channel is available. Although three (3) programmers currently lease access time, there have been as many as five (5) programmers at any given time. Programmers currently provide their programming in the form of a VHS tape to the cable office during business hours. When programmers are not leasing the channel, Cox uses the unused time for commercial display advertising (currently charging \$55 per month for this service) and public service announcements. A local AM station is rebroadcast as audio during this time at no charge.

5. Programs that have aired on leased access in Harrison in the last year are:

- a. A daily local and state news, weather, and sports update
- b. A monthly, one hour pro-wrestling/amateur boxing show
- c. Two (2) weekly, one hour local talk/variety shows
- d. A weekly, half-hour coverage of local criminal/circuit court proceedings
- e. Three (3) weekly, one hour church services
- f. Three (3) weekly, religious teaching programs
- g. A weekly, half-hour fishing/outdoors program
- h. A weekly, half-hour community health program
- i. A weekly, one hour local music/gospel program
- j. City Council Meetings

6. When a new programmer requests information about leased access, they are directed to a person headquartered in Fort Smith, Arkansas, over 130 miles away from Harrison. Programmers also make monthly payments to this person directly and are *not* provided billing services. E-mail is by far the easiest way to reach this person and each correspondence on average takes approximately 30 days to receive an answer. There is no one local that can discuss questions or concerns regarding leased access.

7. There are five (5) areas that concern us regarding leased access:
 - a. Technical fee and insertion charges
 - b. 'Live' delivery methods for programs
 - c. No provisions for a one time use agreement
 - d. Mandatory proof of "media perils" insurance
 - e. Leased access air time rates

8. Technical fees for tape insertion. When we first started leased access the cable system at the time allowed us to install and maintain our own equipment; enabling us to change tapes and equipment out as needed. After being purchased by Cox cable, they required us to remove our equipment and were no longer allowed into the facility. This killed most of the leased access programming in Harrison at that time.

9. Cox then installed their own automated playback equipment for leased access. Cox now requires each program to have its own playback deck. From contract signing to completed installation takes approximately 30-60 days before programmers are able to access the system. Although programmers are not required to lease the deck, they are required to pay a ridiculous technical fee of \$51.49 each time a tape *is inserted* into the machine plus the maximum applicable air time rates for that time slot.

10. When requesting a breakdown of how the technical fee was calculated, we were told that it is “used to reimburse for staff, equipment usage, and studio costs”. However no price breakdown was ever provided.

11. We were able to determine that the equipment¹ used was less than \$150 for the playback deck and had a \$100 remote control device for automated scheduling purposes. Both devices together totaled less than \$250 for each program. At the current unreasonable \$51.49 rate, it only takes 5 tape insertions (if it’s a daily program, then 5 days) before the equipment investment is completely paid in full. After some

¹ There is an additional switching device that connects each video source along with a modulator. Since these two devices are (1) being shared between programmers and (2) allowing the system to profit through showing of display ads and public service announcements, we did not consider them in the equipment lease calculation. The control device is programmed once during initial setup of the machine and never touched again unless the programmer’s contract is amended to reflect a different air time schedule.

investigation into equipment lease rates, we determined that a reasonable lease on equipment valued at \$250 would cost no more than \$25 per month.

12. The Harrison Cox system is not equipped with a studio so, that only leaves the remaining 'staff time' as a consideration in the technical fee information that we were provided from Cox. The only task the Cox staff needs to perform is to simply replace a VHS tape with another VHS tape in a deck very similar to a home VCR and nothing more. It seems unreasonable to charge the programmer a technical fee for tape insertion since this is (1) such a simple, common knowledge task that requires no technical expertise or know how, (2) if Cox had not restricted programmers from accessing the device, they would simply do this themselves, and (3) takes no more than 1 minute to perform. We also feel that ridiculous technical fees such as this should fall under the minimum level of support that cable operators should provide programmers to air their programs at no charge. Programmers should not be penalized for such a simple, common knowledge task.

13. Although we are grateful that Cox installed equipment allowing leased access programmers on the system (which is required by the commission they do), we believe Cox charges ridiculous technical fees (instead of leasing the equipment) to discourage programmers from using leased access. This forces the programmer to pay ridiculously high rates for services that are *not* justified. We ask the commission to not allow cable providers to charge for tasks that a common person would know how to perform in a very minimal amount of time.

14. If the commission does decide cable operators can not charge for these type fees, we are concerned that cable operators may try to justify technical fees by

installing only manual equipment and then charge hourly rates, even overtime rates, for having an employee stay with the equipment the entire time the program airs. This is unnecessary and cost prohibitive when automated playback equipment is very affordable and reliable. Please do not let this to also burden leased access providers.

15. Concerns for 'live' delivery methods. In November 2005, RMI requested consideration into alternative delivery methods other than the current tape exchange situation due to the restrictions mentioned here with insertion/technical fees. We were informed only one other option was available to us. We would need to purchase a dedicated fiber link for "\$1,600/month for the fiber usage plus \$20.00/month per mile"; which did not include the equipment, air time rates, or set-up fees. Finally, in June 2006 we received a quote for the "required" equipment totaling \$7,866.30. Again, the fiber usage fee and air time rates would be an additional recurring charge per month.

16. Over the next year we continued negotiations with Cox attempting numerous program delivery alternatives to find a way around the high cost of fiber. Of those requested were 'like equipment' at reduced cost, 'off-air reception' from an LPTV station, a 'wireless internet type link', 'alternate non-fiber, wired solution', and even offering to move our office closer to Cox to reduce the cable run length.

- a. Negotiation attempt one (1): Similar fiber equipment. When requesting alternative less expensive fiber equipment, we were again told that the equipment quoted was "required". We requested an opportunity to access the cable facility to compare the quoted equipment with what was currently being used. The system *denied* our request due to "security reasons". Furthermore, we were *denied* in requesting Cox to purchase the

exact quoted equipment from a vendor of our choice rather than directly from them. Cox only quoted this equipment was because it was the most expensive equipment available at the time. And *not* allowing us to access the facility to compare the equipment with what was currently being used left us no room to negotiate any further.

- b. Negotiation attempt two (2): Off-air reception via LPTV. We then requested that Cox receive our programming off-air from an LPTV station that was not being carried on the system. Initially Cox did *not* agree that adequate signal reached the receiving tower. However, after requesting that we be present during the signal testing, amazingly (which was no surprise to us) there was more than adequate signal for reception. Almost 30 days pass before we are provided the exact same fiber usage and equipment quote plus additional tower rent for a receiving antenna. According to Cox, the receiving tower needed to transport the signal via fiber to another facility. We stated that Cox was already providing this service to other programmers at no charge and additional equipment was not necessary if Cox would simply allow us to utilize the current equipment that was already in place. Cox responded that they “may (1) purchase the equipment and lease it to the programmer at a reasonable rate or (2) require the programmer pay full purchase price and retain ownership of the equipment in order to accommodate a leased access programmer’s request.”²

² See CFR § 76.971(4)(c)

Again Cox was doing nothing more than discouraging us from gaining alternative access to the system. We completely *disagree* with the cable system's self-serving interpretation and partial consideration of the commission's rules and regulations. Leased access programmers should *not* be charged for additional equipment if the system already has current equipment not fully utilized or is providing similar equipment and/or services to other programmers (leased or non-leased) at no charge.

- c. Negotiation attempt three (3): Off-air reception via microwave. We then attempted to negotiate a link using microwave technology directly to a location where *no* fiber would be necessary. We were *denied* due to Cox *not* having an adequate tower to handle the weight of the microwave's receiving dish. We then requested to use a lightweight microwave unit that used wireless technology on a non-licensed frequency similar to wireless internet. This was also denied due to company policy *not* allowing non-licensed frequencies to be received by the system.

This is again another attempt to discourage programmers from gaining access to the system by not allow them a choice in deciding their own delivery method. Cable systems receive off-air signals everyday from many video sources. Simply because wireless internet technology uses an unlicensed frequency should not be a reason to discourage programmers from taking advantage of using this secure, proven technology.

- d. Negotiation attempt four (4): coax link in lue of fiber. By now we were extremely discouraged; a year had passed since we initially began negotiations, but we still had one final request that had yet to be answered.

After almost 60 days since our request for the coax link, we felt no choice but to demand Cox respond or a complaint be filed with the FCC. At the same time we reminded Cox that an existing 'live' coax link (which had been installed in years past) was still in use to cover city council meetings at no charge to the city or the program provider for the link or airtime. Cox then agreed to our request however informing us they were initially *not* going to provide the link until we made them aware of the existing coax link. This acceptance by Cox forced us to relocate our office location to a location within 500 feet from their facility. Cox provided the coax link and modulator for our programming in February of 2007.

We were later informed that Cox had abandoned the other coax link once we notified Cox's corporate headquarters of its use. Now for the first time ever since the inception of leased access in Harrison, the community *no* longer sees the city council meetings live as they had been accustomed to in the past.

On the other hand when the installation of the coax link at our facility was completed, we increased our purchased leased time from 5 hours a week to over 40 hours per week. Along with an increased local programming line-up, we are now able to provide daily local news and up

to the minute weather updates to local viewers; which would *not* have been possible with the previous tape exchange delivery method.

17. We ask the commission to allow programmers to choose the equipment and specifications for program delivery and the transportation method the programming is sent to the cable system for retransmission. Cable systems should *not* be allowed to demand programmers pay for equipment if the programmer wishes to use alternate equipment.

18. Issues with long term lease agreements: Cox does not feasibly allow programmers access to the system unless agreeing to a one year lease agreement. This discourages timely event programs such as city council meetings, parades, car shows, fairs, fireworks celebrations, etc. We feel it is the commission's intent to encourage this type of locally-based program allowing cable subscribers a way to see and know what is going on in their specific geographical areas.

19. Currently if a programmer wishes to add a program, even a one time playing such as the examples given above, then either the programmer's current yearly contract be amended or a new yearly contract (both taking at least 30 days) be agreed upon and a new play back deck be installed if one is not available. This is too restrictive and too long a period of time for programmers to wait for these timely programs. For example: a 4th of July fireworks program might be watched the day after on July 5th. However with the current requirements that Cox imposes, the program may not run until August. That is unless the programmer requested back in June their intentions of doing such a program.

20. It is a disservice to the cable subscribers and this community for Cox not being more flexible in allowing these types of programs to air on the system on a timelier basis. We feel a more appropriate solution is to provide the programmer a simple, one time use agreement; one that does not require a yearly contract. This would allow more programmers to take advantage of leased access. Surely the system could provide a single deck that does just this. Programmers should be able to pay upfront the airtime and/or technical fees for this service when the program is provided to their local cable office. Programmers who wish to take advantage of a one time use agreement should not be required to contact someone at a distant office to negotiate the contract or arrange payment such as the situation currently in Harrison. If a solution like this is not offered, timely local community events may never be available on leased access in this community.

21. Concerns regarding mandatory “media perils” (broadcasters) insurance: Many cable systems demand leased access programmers carry very expensive and unnecessary “media perils” (broadcasters) insurance. This insurance can run as high as \$3,000 plus per year adding to the already economically unfeasible price for leased access. We feel this is unnecessary and should not be the cable systems obligation to demand leased access programmers provide proof of insurance or not be allowed to access the system. Cable systems are already held harmless from lawsuits based on content, due to the law banning them having any editorial control over such content. In addition, cable systems do not require non-leased access programmers provide proof of this insurance nor do they deny them access to the system if they don’t carry it. This is ***unwarranted and biased*** to the leased access programmer in not allowing them ‘same-

type' access as other programmers. Cable operators do not demand proof of insurance from non-leased access programmers and *should not* demand this of leased access programmers. The decision to carry insurance on programming should be made by the programmer.

22. Concerns regarding air time rates: Cox does not allow programmers to negotiate leased access airtime rates. Rates are typically too high for the market to bear and when Cox requires unreasonable prices for technical fees and transport usage fees makes it nearly impossible to afford. Programmers have nothing to negotiate with unless the cable system voluntarily decides to discount the price (which is not the case with Cox), so the maximum applicable fee for airtime always applies. To assist in negotiations, we would like the commission to award programmers' discounts and/or must-carry privileges if the programmer provides (1) multiple programs to the system and/or (2) community oriented programming alternative to what is currently airing on the system's leased access channel. Such programming would provide cable operators valuable local information exclusive to the communities that they serve and allow programmers additional negotiating leverage. The commission already allows carriage privileges to television stations due to their commitment in serving the communities in which they are received. Leased access programmers should also be awarded the same. We suggest a 50% discount to programmers that meet both requirements or request the commission to enact a similar must-carry provision for full time leased access programmers who can offer "Class A" type local programming for the community. Programmers that only provide one program or programs do not promote community awareness of community news and/or information then these programs do not apply.

23. The following example is to reference to the commission why the current leased access rates are too high in Harrison for the market to bear. RMI, like most all LPTV stations in a small community, bases its advertising rates to compete with local radio and local cable's advertising rates. Cox in Harrison's most expensive ad rate costs \$7.50 per run of a 30 second spot during prime time (\$2.50 for their lowest priced time). KBCN, a local high power, commercial radio station in Harrison, charges \$8 for their most expensive 30 second ad. Both Cox and KBCN have lower priced rates depending on the time the ad runs. When leasing through tape insertion, RMI can only charge one price of \$5 per run of a 30 second ad due to its inability to access the program once it is provided to the cable system. A typical hour television program can support four (4) 2 minute breaks (consisting of 16 advertisers per hour show). If all the advertising time is sold (which is rarely the case) at \$5 per spot, then this program grosses \$80 (\$5 x 16 advertisers). Leased access prime time (between 6pm and 10pm) rates in Harrison are \$12 per hour. However the technical fee to insert the program cost \$51.49 totaling \$63.49 for this one hour airing. RMI would only receive \$16.51 (\$80 - \$63.49) to pay for the production, sales commissions, and broadcast insurance for that program. This is *not* sufficient funds. In order to compete, RMI had no choice but to replay the multiple times throughout the week or even an entire month before the new program could be changed out. The problem here is that programs are soon outdated and too cost prohibitive to replace programming on a timely basis. This is precisely the reason RMI requested and finally (after a year and a half) granted a direct coax link. RMI can now afford to provide daily news, up to the minute weather updates, and timely coverage of local events through leased access.

24. Conclusion and Summary: We hope that this offers some insight into how Cox responds to requests for leased access and ultimately assists the commission in increased interest in leased access across the board.

25. We ask the commission to allow programmers to choose the program delivery method they wish to use. Cable systems should not restrict users from taking advantage of other program formats and delivery methods. Any format and/or delivery method should be acceptable: tape, DVD, internet, coax, fiber, an unlicensed frequency wireless microwave, IPTV, or any current or new technology.

26. We also request the commission allow programmers to choose equipment to their specifications instead of the cable system demanding they have sole authority of specifications and from whom the equipment is purchased.

27. And likewise, if a programmer wishes to take advantage of services the system already provides to other programmers at no charge, (such as a signal transport method currently in place, e.g.: a receiving tower to the system's principal head-end) then that service should also be provided to the leased access programmer at no charge.

28. We would also request the commission ***not allow*** cable providers to charge ridiculous technical fees for tasks that a common person would know how to perform in a very minimal amount of time (such as replacing a tape) if the cable provider is going to restrict the programmer from accessing the equipment.

29. We request the commission allow programmers additional discounts or enact a similar must-carry provision as LPTV stations for qualified programmers when providing multiple or community service programming to increase diversity and use of leased access on the system.

30. We request that cable operators not restrict programmers from leased access if proof of media perils insurance is not provided.

31. And lastly, we would like the commission to address a simple one time usage agreement that allows programmers the opportunity to access the cable system and provide timely event programming instead of always requiring programmers to commit to a long term leased access agreement.

Reynolds Media, Inc.
217 W. Stephenson
Harrison, AR 72601
Tel: 870-741-4891
Fax: 866-316-9942

Respectfully submitted,

A handwritten signature in black ink that reads "Ian Reynolds". The signature is written in a cursive style and is positioned above a horizontal line.

Ian Reynolds

Vice President
RMI

Date: July 31, 2007