

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Leased Commercial Access) **MB Docket No. 07-42**

To: The Commission

**COMMENTS IN SUPPORT OF REQUEST TO OVERRIDE THE ACTION OF
THE OFFICE OF MANAGEMENT AND BUDGET AND TO MODIFY
THE COMMISSION'S *REPORT AND ORDER***

1. The Community Broadcasters Association (“CBA”) hereby submits these Comments in support of the request filed on August 26, 2008, by the United Church of Christ, Office of Communication, Inc. and Media Access Project (“UCC-MAP”)¹ that the Commission override the action of the Office of Management and Budget (“OMB”) objecting to certain aspects of the rules and regulations adopted in this proceeding. CBA is the trade association of the nation’s Class A and Low Power Television stations. CBA has participated vigorously in this proceeding and is an Intervenor in the pending judicial appeal.² Leased access is critically important to Class A and LPTV stations, because most of them do not have mandatory cable carriage rights and cannot obtain access any other way to the cable distribution that is vital to the success, if not the survival, of their businesses.³

2. UCC-MAP have established a legally valid and persuasive case for overriding the action of OMB. OMB appears to have concentrated too much on so-called burdens on cable television operators that are not really burdensome, at the expense of fulfilling the basic purpose

¹ The Commission invited comment on the UCC-MAP Petition by Public Notice, DA-08-2080, released September 10, 2008.

² Case Nos. 08-3245 *et al.*, U.S. Court of Appeals for the Sixth Circuit.

³ *See* 47 USC Sec. 614(h).

of Congress in enacting leased access into law, which was to encourage the development of diverse voices in the distribution of video programming. Because OMB's resolution would leave the primary Congressional objective unsatisfied, the Commission should exercise its lawful authority to put its own regulations into effect notwithstanding OMB's action.

3. The specific issues raised by OMB reflect an apparent lack of understanding of what the Commission's regulations require. Responding to a request for terms and conditions for leasing should require no more than providing material most of which a cable operator should already have available, so suggesting that more staff will be required to comply with a reduced time deadline does not make good sense.⁴ Moreover, the idea that the Commission should not shorten the response time because that step will result in an increase in non-*bona fide* requests for leased access is unjustified. Voiding a regulation because some requests for leased access information may come from parties who are not likely to sign leases, whether because of lack of financial capability or otherwise, boils down to a statement that Congress cannot create an access scheme unless potential users must establish their qualifications in advance – an issue that the statute does not address, indicating that Congress did not intend to create such a barrier. OMB's approach also favors the large businesses that own most cable systems over the small businesses that are likely to request leased access,⁵ directly contrary to the intent of Congress to eliminate media entry barriers faced by small businesses.⁶ The record in this proceeding makes it crystal

⁴ As UCC-MAP points out, the Commission's rules already provide a more relaxed deadline for small cable operators who may receive fewer requests for leased access and have smooth procedures in place to respond to request.

⁵ While some potential channel lessors are large businesses, they are likely to have the economic wherewithal to negotiate carriage arrangements with having to rely on the statutory right to lease capacity without which most small businesses could not gain access at all.

⁶ See 47 USC Sec. 257.

clear that access by small businesses to cable television distribution has been a dismal failure under previous regulations, so something must be done if the primary intent of 47 USC Sec. 612 is to be fulfilled.

4. CBA notes the claim of the cable industry that the new regulations could result in a leasing rate of zero for some cable systems. CBA agrees with UCC-MAP that a zero rate was not intended by either Congress or the Commission; and if the regulations would in fact produce that result, CBA has no objection to a modification addressing that specific problem. However, under no circumstances should the absolute rate cap⁷ be eliminated, because one important factor in reducing barriers to small business is simplification. There needs to be a simple rate determination to serve as a fallback for those unable to match wits with cable operators or to afford adjudication to resolve disputes over application of a formula that is complex and involves information within the sole possession of the cable operator. A fixed cap serves that purpose very well.

5. In sum, CBA agrees with all of UCC-MAP's positions and arguments, urges the Commission to override OMB objections to the regulations adopted in this proceeding, and does not object to a clarification that would avoid a result requiring access at a zero rate.

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Respectfully submitted,


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September 24, 2008

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⁷ The cap of 10 cents per subscriber per month established by the Commission in this docket is high, in CBA's view, and will still stand as an entry barrier for some small businesses. However, it is much better than no cap and should not be abandoned.

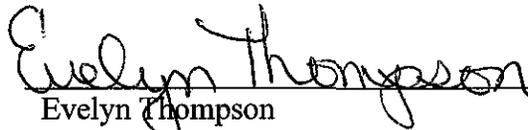
⁸ Not admitted in VA; admitted to the bar only in the District of Columbia.

CERTIFICATE OF SERVICE

I, Evelyn Thompson, do hereby certify that I have, this 24th day of September, 2008, caused a copy of the foregoing "Statement in Support of Request To Override the Action of the Office of Management and Budget and To Modify the Commission's *Report and Order*" by first class United States mail, postage prepaid, to the following:

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