

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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

**COMMENTS OF COASTAL MEDIA PARTNERS
IN SUPPORT OF UNITED CHURCH OF CHRIST’S REQUEST TO OVERRIDE THE
ACTION OF THE OFFICE OF MANAGEMENT AND BUDGET AND TO MODIFY
THE COMMISSION’S *REPORT AND ORDER***

Coastal Media Partners, LLC (“CMP”), hereby submits these comments in support of the request filed by Media Access Project (“MAP”) on behalf of the United Church of Christ in the above-captioned proceeding. Specifically, CMP urges the Commission to override the disapproval action of the Office of Management and Budget (“OMB”) regarding the Commission’s requested revision to the information collection in this proceeding and also that the Commission modify its calculation for leasing a full channel (the “*MAP Request*”). Taking such action will better ensure the viability of commercial leased access, promote small business and is entirely consistent with the Congressional directive “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.”

I. BACKGROUND AND INTRODUCTION

Coastal Media Partners, LLC (“CMP”) is a leased access programmer located in Gulf Shores, Alabama. As a small business, the Commission’s leased access rules and policies are not a mere legal abstraction to CMP that can be endlessly debated and delayed, instead the rules, or lack thereof, have a very real, significant and immediate impact on CMP’s commercial viability.

CMP purchased certain assets of Island TV Network on May 7, 2008, with the goal of operating a channel focused on the local community. In large part this acquisition was based on the Commission’s *Report and Order and Further Notice of Proposed Rulemaking*, 23 FCC Rcd 2909 (2008) (“*Report and Order*”), in which the Commission adopted necessary reforms to its leased access rules and improved the methodology for calculating leased access rates. Subsequent to CMP’s purchase of Island TV Network’s assets a *Stay of the Report and Order* was enacted. The inability to rely on the Commission’s new pricing rules has caused severe financial strain on CMP that threatens the viability of it operating in manner that maintains a local community focused channel. The OMB’s disapproval of portions of the reforms enacted in the *Report and Order* has created even greater uncertainty and obstacles for CMP.

These difficulties have been exacerbated by the fact that CMP’s local cable incumbent provider has been very uncooperative in working with CMP. The cable operator, has been unwilling to provide specific carriage numbers upon which their billings are based and provides poor customer service and support. In the face of the cable operator’s intransigence and anticompetitive practices, it is questionable as to whether CMP, or any community focused access provider, can survive in the absence of the Commission taking actions to reinstate the reforms that it adopted in its *Report and Order*.

II. THE COMISSION SHOULD OVERRIDE THE OMB

As part of its *Report and Order* the Commission amended its leased access rules by adding a new section 76.972.¹ On July 7, 2008, OMB issued a notice regarding the Commission's addition of section 76.972, and in particular the provisions of new section 76.972(b) regarding the information a cable operator is required to provide a programmer seeking information on leasing a commercial access channel. See *Notice of Office of Management and Budget Action*, OMB Control Number 3060-0568 (July 7, 2008) ("*OMB Notice*").

The *OMB Notice* disapproved of the information collection requirements of Section 76.972(b) based on its finding that the Commission did not demonstrate that:

1. The need exists for reducing the time-frame in which operators have to provide potential programmers with information from 15 days to 3 days;
2. It had taken reasonable steps to minimize the burden on respondents who will have to hire new staff to comply with the reduced deadline;
3. There are reasonable mechanisms in place to protect the proprietary and confidential information the respondents will have to provide to potential programmers;
4. The practical utility and need for increased paperwork exists for non-bona fide inquiries; and
5. It has taken reasonable steps to reduce the burden on respondents due to decreased pricing, since respondents will have more inquiries and will need more staff to field those inquiries.

OMB Notice at 1-2.

As MAP demonstrates in its petition, the OMB provided virtually no justification for its conclusions. In particular, OMB failed to take into consideration the interests of the small

¹ 47 C.F.R. § 76.972.

businesses, such as CMP, that utilize cable leased access, and which desperately need the regulations adopted by the Commission in its *Report and Order*. As CMP can attest first hand, the information collection requirements adopted in the *Report and Order* are absolutely essential for small leased access providers.

The Commission should grant MAP's petition and override OMB's decision for a number of reasons. First, as the Commission itself found in adopting the *Report and Order*, the information requested in Section 76.972(b) is necessary to facilitate the goals set forth by Congress in Section 612 of the Communications Act "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."² As MAP correctly notes, the Commission specifically found, the "alternative of retaining the current leased access rules would hinder achieving" those Congressional goals.³

Second, CMP agrees with MAP that the OMB did not justify its conclusion that a three day response time is too short a window for cable operators to provide information that should be readily available, and indeed is required to be available under the Communications Act and the Commission's rules. As the Commission explained in the *Report and Order*,

Our current Rules provide for a 15 day response by cable system operators to a request by a potential programmer. That response must include information on channel capacity available, the applicable rates, and a sample contract if requested. That response time is unnecessarily long and, as discussed below, the information is inadequate. Cable operators must have leased access channel information available in order to be able to comply with the statute and our Rules. It does not take 15 days

² Codified at 47 U.S.C. §532(a).

³ MAP at 2 ,quoting *Report and Order*.

to provide a copy of that information to a potential leased access programmer. Three business days to reply to a request for such information is more than adequate.⁴

Given the fact that cable operators are already required to retain this information under federal law, it strains reason in this digital age that cable operators – by their own account some of the most sophisticated communications providers in the world – cannot furnish such information within three days. Further, the OMB Notice does not appear to have looked at the countervailing interests of leased access providers, the majority of which, like CMP, are small businesses, in getting access to such information in a timely manner.

Third, CMP agrees with MAP that the OMB's expressed concerns that the Commission has not taken measures to protect proprietary and confidential information of cable operators is overwrought and misplaced. As an initial matter, the vast majority of the required information -- the process for requesting leased access channels and the terms and conditions for the leased access channels, should not constitute proprietary and confidential information. Moreover, OMB does not appear to have considered the fact that to the extent cable operators have legitimate concerns over proprietary information, the Commission has preexisting procedures in place that provide ample means for a cable operator to protect such data.

Finally, OMB's concerns over the increased paperwork burden on cable operators that may result from non-bonafide inquires is unfounded. As discussed above, cable operators are already required under statutory mandate to retain much of this information. Further, OMB's analysis overlooks the fact that the Commission has taken steps to protect small cable systems from unduly burdensome requests.

⁴ *Report and Order*, at ¶ 14.

CMP has itself experienced difficulties in dealing with its local incumbent cable operator. In the absence of specific, verifiable rules and timeframes related to leased commercial access these difficulties will continue. Moreover, these practices when combined with a cable operator's overall poor customer service and non-responsiveness for everything from installing service to picture quality, all combine to threaten the viability of a small local programmer such as CMP. The FCC's *Report and Order* simply imposes a minimum of accountability and streamlines a process that is already weighted heavily in favor of the cable operator.

Based upon the above, it is clear that the OMB's concerns are misplaced and outweighed by the public interest concerns in not enacting the provisions of the *Report and Order*. Accordingly, the FCC should vote to override the *OMB Notice* in accord with MAP's petition.

III. THE COMMISSION SHOULD MODIFY ITS METHODOLOGY FOR LEASING A CHANNEL

CMP supports MAP's suggestion to modify the Commission's rate calculation for leasing a channel. Concerns have been raised by cable operators that the rate methodology adopted by the Commission in the *Report and Order* could theoretically result in a leased access rate of zero. To avoid this unintended result, MAP proposes to allow cable operators to assign values to programming in a bundle where channels do not have explicitly assigned licensing fees. To protect leased access programmers MAP further recommends the Commission require cable operators to make its valuations within the bundle public and subject to challenge.

CMP agrees that the MAP proposal should resolve the concerns raised by cable operators while at the same time ensuring more reasonable rates for leased access providers. CMP also agrees that there must be transparency in the rate calculations. CMP has experienced firsthand the difficulty

in attempting operate its business without being able to obtain specific costs associated with billings for leased access.

IV. CONCLUSION

Based on all of the above, CMP submits that the rules adopted in the Commission's *Report and Order* were reasonable, well-supported and necessary steps to carry out the Congressional goals of ensuring the viability of leased access and a diversity of programming. Accordingly, the Commission should override the OMB's Notice, and take actions to adopt MAP's proposed modification of the rate methodology.

Respectfully submitted,

Sean Stokes

Sean Stokes
Adrian Herbst
The Baller Herbst Law Group
2014 P Street, NW
Washington, DC 20036
sstokes@baller.com
(202) 833-0166

Attorneys for
Coastal Media Partners, LLC

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