

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

In the Matter of:	)	
	)	
Aamen TV Ministry	)	
	)	
v.	)	CSR 5122-L
	)	
MediaOne	)	
	)	
Petition for Partial Reconsideration	)	

MEMORANDUM OPINION AND ORDER

Adopted: May 4, 2000

Released: May 9, 2000

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. MediaOne has filed a petition for partial reconsideration of *Aamen TV Ministry v. MediaOne* (“*Aamen*”).<sup>1</sup> Aamen TV Ministry filed no opposition to MediaOne’s petition.

2. In *Aamen* the Cable Services Bureau addressed a petition filed by Aamen TV Ministry pursuant to the provisions of Section 76.975 of the Commission’s rules<sup>2</sup> alleging that MediaOne had imposed certain unreasonable terms and conditions in connection with the provision of commercial leased access service. Of the issues resolved in *Aamen*, MediaOne seeks reconsideration only of the determination that MediaOne failed to justify a five percent franchise fee imposed in addition to its charges for leased access service provided to Aamen TV Ministry on its cable system serving the south central area of Los Angeles, California. In *Aamen*, the Bureau held that franchise fees are accounted for in the calculation of the average implicit fee pursuant to the formula set forth in 47 C.F.R. § 76.970(d), noting that franchise fees are included in the operator’s monthly total subscriber revenue figure utilized in that formula.<sup>3</sup>

II. DISCUSSION AND ANALYSIS

3. In its reconsideration petition, MediaOne contends that it should be permitted to charge the five percent franchise fee in addition to the leased access channel charge, which is subject to the average implicit fee limitation set forth in the Commission’s rules.<sup>4</sup> MediaOne

<sup>1</sup>13 FCC Rcd 22244 (CSB 1998)

<sup>2</sup>47 C.F.R. § 76.975.

<sup>3</sup>*Aamen*, 13 FCC Rcd at 22248.

<sup>4</sup>*See* 47 C.F.R. § 76.970.

asserts for the first time in the reconsideration petition that it does not include franchise fees as part of gross revenues in calculating the leased channel charge, and contends therefore that it should be permitted to impose a franchise fee separate from and in addition to the channel charge. MediaOne contends it would recover the same amount of franchise fees through this methodology as it would if franchise fees were included as part of gross revenues.<sup>5</sup> MediaOne asks the Commission not to elevate form over substance by precluding operators from adding franchise fees at the either the outset or at the conclusion of the average implicit fee methodology.

4. A petition for reconsideration that relies on facts not previously presented to the Commission or designated authority may be granted where consideration of those facts is in the public interest.<sup>6</sup> The Commission's rules provide that a reconsideration petition must be supported by facts related to events that occurred since the last opportunity for presenting them or by facts that were unknown, or through ordinary diligence could not have become known, since the last opportunity for presenting them.<sup>7</sup> MediaOne's reconsideration petition does not fall within either of these categories. The factual material presented in support of the reconsideration petition relative to franchise fees was known, or with ordinary diligence should have been known to MediaOne when it responded to Aamen's original petition for relief. In any event, *Aamen* correctly indicated that Section 76.970(d) contemplates the inclusion of franchise fees "in the total amount the operator receives in subscriber revenue per month for programming," which is utilized in the average implicit fee formula.<sup>8</sup> MediaOne has presented nothing for the record that supports its new contention that it would recover the same amount of franchise fees through its proposed rate methodology as it would applying the average implicit fee formula set forth in Section 76.970 of the Commission's rules, nor has it shown that its proposed rate methodology would produce the same total leased channel charge as does the average implicit fee formula. Lastly, MediaOne has failed to demonstrate that a waiver of the methodology set forth in our rule for calculating the average implicit fee is warranted.<sup>9</sup> We therefore deny MediaOne's petition for reconsideration.

### III. ORDERING CLAUSES

5. For the foregoing reasons, IT IS HEREBY ORDERED, pursuant to authority delegated under Section 0.321 of the Commission's rules, that the Petition for Partial Reconsideration of *Aamen TV Ministry v. MediaOne*, 13 FCC Rcd 22244 (CSB 1998) filed by MediaOne **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Cable Services Bureau

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<sup>5</sup>MediaOne Petition at 2-3 and Exhibit 1.

<sup>6</sup>47 C.F.R. § 1.106(c)(2).

<sup>7</sup>47 C.F.R. § 1.106(b)(2).

<sup>8</sup>*Aamen*, 13 FCC Rcd at 22249.

<sup>9</sup>*See* 47 C.F.R. § 76.970(d).