

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

In the Matter of:	)	
Frank J. Vitale, d/b/a Fal-Comm Communications	)	
	)	
v.	)	CSR-5372-L
	)	
MediaOne of Metropolitan Detroit, Inc.	)	
	)	
Leased Access Petition	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: May 11, 2000**

**Released: May 16, 2000**

By the Deputy Chief, Cable Services Bureau:

**I. INTRODUCTION**

1. Frank J. Vitale d/b/a Fal-Comm Communications (“Fal-Comm”) filed the above-captioned petition pursuant to Section 76.975(b) of the Commission’s rules against MediaOne of Metropolitan Detroit, Inc. (“MediaOne”), operator of cable systems serving Dearborn and Wayne, Michigan.<sup>1</sup> MediaOne filed a response to the petition.

**II. BACKGROUND**

2. The Cable Communications Policy Act of 1984 imposed on cable operators a commercial leased access requirement designed to assure access to cable systems by unaffiliated third parties who have a desire to distribute video programming free of editorial control by cable operators.<sup>2</sup> Channel set-aside requirements were established proportionate to a system’s total activated channel capacity. The Cable Television Consumer Protection and Competition Act of 1992 revised the leased access requirements and directed the Commission to implement rules to govern this system of channel leasing.<sup>3</sup> In *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order and Further Notice of Proposed Rule Making (“*Rate Order*”),<sup>4</sup> the Commission adopted new rules for leased access addressing maximum reasonable rates, reasonable terms and conditions of use, minority and educational

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<sup>1</sup> 47 C.F.R. §76.975.

<sup>2</sup> Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984).

<sup>3</sup> Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). See Section 612(b) of the Communications Act of 1934, as amended, 47 U.S.C. §532(b).

<sup>4</sup> 8 FCC Rcd 5631 (1993).

programming, and procedures for resolution of disputes.<sup>5</sup> The Commission modified some of its leased access rules in *In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Second Report and Order and Second Order on Reconsideration of the First Report and Order (“*Second Report*”).<sup>6</sup>

### III. DISCUSSION

3. Fal-Comm, an independent producer of video programming in the Metro-Detroit area, states that on January 5, 1999 it submitted a written request for a complete schedule of the full-time and part-time leased access rates for the Dearborn and Wayne systems.<sup>7</sup> Fal-Comm states that, as of the filing of its petition (February 1, 1999), MediaOne failed to respond to its request for leased access rates on the Dearborn and Wayne systems.<sup>8</sup> Fal-Comm contends that this is the third instance where it has been compelled to file a petition against MediaOne for failure to respond to a leased access inquiry within the time period required by the Commission’s rules.<sup>9</sup> Fal-Comm contends that MediaOne’s failure to respond within the time frame required by the Commission’s rules, “demonstrates a deep-rooted anti-commercial leased access culture towards small independent video producers.”<sup>10</sup> Fal-Comm also asserts that MediaOne’s repeated failure to respond merits the imposition of sanctions or forfeitures.<sup>11</sup>

4. In its response, MediaOne asserts that it failed to respond to Fal-Comm’s request for leased access information within the 15-day time period due to exigent circumstances.<sup>12</sup> MediaOne states that it acquired the Dearborn and Wayne, Michigan, systems from Cablevision Industries Limited Partnership on December 2, 1998. MediaOne states further that at the time of the acquisition, its Financial Planning and Analysis Group was preparing the 1999 leased access rates for all of MediaOne’s Michigan systems. MediaOne states that the new rates had not been finalized at the time petitioner made its request. MediaOne asserts that the leased access rates used by MediaOne’s predecessor could not be used in the interim because the rates included costs and information from systems that were not purchased by MediaOne. MediaOne states that it provided Fal-Comm the rates on January 28, 1999 as soon as they were finalized by its Financial Planning and Analysis Group. Finally, given the exigent circumstances, MediaOne contends that it should not be sanctioned for a short and reasonable delay in providing the 1999 rates to petitioner.

5. Fal-Comm’s petition in File No. CSR 5372-L will be denied. Pursuant to Section 76.970(h), cable operators are required to respond to requests for leased access information “within 15 calendar days of the date on which a request for leased access information is made.”<sup>13</sup> Fal-Comm does not

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<sup>5</sup> See 47 C.F.R. §76.970, 76.971, 76.975 and 76.977 (1995).

<sup>6</sup> 12 FCC Rcd 5267 (1997). See also *In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Order on Reconsideration of the First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 16933 (1996).

<sup>7</sup> Petition at 1; see 47 C.F.R. §76.970(h).

<sup>8</sup> Petition at 1.

<sup>9</sup> *Id.* at 1-2.

<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 2.

<sup>13</sup> 47 C.F.R. §76.970(h).

refute MediaOne's assertion that it forwarded the 1999 leased access rates to petitioner eight days later than required by our rules.<sup>14</sup> While it is clear that MediaOne failed to comply with the fifteen (15) day response period required by Section 76.970(h), we believe no enforcement action is warranted based upon the record before us. In this regard, we note that the eight-day delay complained of was of short duration and resulted from MediaOne's recent purchase of the relevant systems, the inability to rely on the leased access rates of the previous owner of the systems, and the necessity of reformulating the leased access rates for the newly-acquired systems. For these reasons, we also believe that the imposition of forfeitures is not appropriate. Consequently, we deny Fal-Comm's petition.

#### IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that the petition for relief of Fal-Comm Communications (Fal-Comm) in File No. CSR 5372-L **IS DENIED**.

7. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules.<sup>15</sup>

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Cable Services Bureau

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<sup>14</sup> *Id.*, see Exhibit A.

<sup>15</sup> 47 C.F.R. §0.321.