

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

In the Matter of:)	
)	
Aamen TV Ministry)	
)	CSR 5411-L
v.)	
)	
MediaOne)	
)	
Petition for Commercial Leased Access)	

MEMORANDUM OPINION AND ORDER

Adopted: September 21, 2000

Released: September 29, 2000

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Aamen TV Ministry ("Aamen") filed a petition for special relief pursuant to the provisions of 47 C.F.R. § 76.975 alleging that MediaOne has imposed unreasonable terms and conditions, and requesting payment for expenses incurred and commercials lost, in connection with the provision of commercial leased access service. No response to the petition was received.

2. The 1984 Cable Act 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 of cable operators.¹ Channel set aside requirements were established proportionate to a system's total activated channel capacity. The 1992 Cable Act revised the leased access requirements and directed the Commission to implement rules to govern this system of channel leasing.² In *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order and Further Notice of Proposed Rulemaking ("*Rate Order*"),³ the Commission adopted new rules for leased access addressing maximum reasonable rates, reasonable terms and conditions of use, minority and educational programming, and procedures for resolution of disputes.⁴ The Commission modified some of its leased access rules in *Implementation of the Cable Television Consumer Protection and Competition*

¹Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984).

²Cable 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).

³8 FCC Rcd 5631 (1993).

⁴See 47 C.F.R. §76.970, 76.971, 76.975 and 76.977 (1995).

*Act of 1992, Second Report and Order and Second Order on Reconsideration of the First Report and Order, 12 FCC Rcd 5267 (1997) ("Second Report").*⁵

II. DISCUSSION AND ANALYSIS

3. Aamen alleges that MediaOne pre-empted all of its commercial leased access programming that had been scheduled for presentation from 6:00 p.m. to 9:00 p.m. on May 2, 1999, and carried other programming instead. Aamen requests that MediaOne be ordered to reimburse it \$1,700 for videotaping and editing expenses and lost commercial revenue associated with the pre-empted programming.⁶ Aamen supports this claim with a copy of a letter to MediaOne registering in advance objections to the pre-empting of its programming.⁷ MediaOne's letter in response stated that the contract with Aamen limits liability for non-airing of leased access programming and that Aamen's account would be credited \$212.53 for the leased access charges applicable to the programming scheduled for May 2, 1999 but not aired. The circumstances related to Aamen's programming not being aired on May 2, 1999 are not discussed on the record. As such, we do not have the information necessary to establish a violation of Section 76.971 of the Commission's rules.⁸

4. MediaOne further stated that it did not owe Aamen \$800 for taping and editing and \$900 for commercials.⁹ Although MediaOne's representations concerning the liability limits of the contract are not disputed, Aamen claims it had no alternative but to sign an allegedly unfair contract.¹⁰ We reject Aamen's argument. A mere allegation that a liability limiting provision of a contract is unfair does not establish any violation of the Commission's leased access regulations. Aamen presented no evidence demonstrating that a contract provision, which provides for refund of leased access usage charges when programming is not aired as scheduled but does not provide for payment of the leased access programmer's production expenses and lost commercials, is unreasonable. Accordingly, Aamen's further request that the Commission revise MediaOne's leased access contract to make MediaOne responsible for lost revenue in such circumstances will not be considered in this proceeding.

5. Aamen also states that the hours from midnight to 5 p.m. on MediaOne's leased access channel have been leased to another programmer, and requests an order restoring the daytime hours to Aamen. Aamen has presented no evidence to establish that it is entitled by contract or otherwise to the particular daytime hours on the channel MediaOne leased to another user. Nor has Aamen established that the requirements of Section 76.971(1) for MediaOne to open a second part-time leased access channel have been met.¹¹ We therefore

⁵See also *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).*

⁶Petition at 2-3 and attachments.

⁷*Id.*

⁸47 C.F.R. § 76.971.

⁹Petition at 2-3 and attachments.

¹⁰Petition at 2.

¹¹See 47 C.F.R. § 76.971(1), which provides, in part, that "A cable operator that is unable to provide a comparable time slot to accommodate a part-time programming request shall be required to open an additional channel for part-time use unless such operator has at least one channel designated for part-time leased access use that is programmed with less than 18 hours of part time programming every day. However, regardless of the availability of partially programmed part-time leased access channels, a cable operator shall be required to open an additional channel to accommodate any request for part-time leased access for at least eight contiguous hours, for the same

(continued...)

deny this request.

6. Finally, Aamen in effect requests an untimely reconsideration of *Aamen TV Ministry v. MediaOne* ("Aamen")¹² in which we previously considered the reasonableness of MediaOne's insurance requirements for leased access programming. Since the time for reconsideration of *Aamen* has elapsed under the Commission's regulations, this request is denied.¹³

III. ORDERING CLAUSES

7. For the foregoing reasons, **IT IS HEREBY ORDERED** that the Petition for Relief filed by Aamen TV Ministry **IS DENIED**.

8. This action is taken pursuant to authority delegated under Section 0.321 of the Commission's rules.¹⁴

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

(...continued from previous page)
time period every day, for at least a year."

¹²13 FCC Rcd 22244 (CSB 1998).

¹³See 47 C.F.R. § 1.106.

¹⁴47 C.F.R. § 0.321.