

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

In the Matter of:)	
)	
Falcomm Communications)	
)	CSR 5574-L
v.)	
)	
Comcast Communications, Inc.)	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: November 6, 2000

Released: November 9, 2000

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Falcomm Communications (“Falcomm”), Novi, Michigan, has filed a petition pursuant to Section 76.975(b) of the Commission’s rules,¹ alleging that Comcast Communications, Inc. (“Comcast”) has violated Section 76.971(c) of the Commission’s rules regarding commercial leased access terms and conditions.² Comcast filed a reply to the petition.³

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 the editorial control of cable operators.⁴ 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 the system of channel leasing.⁵ 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*”),⁶ the Commission adopted rules for leased access

¹ 47 C.F.R. § 76.975(b).

² 47 C.F.R. § 76.971(c).

³ Comcast states that it serves television customers in Waterford, Pontiac and Lake Angelus, Michigan.

⁴ Pub. L. No. 98-549, 98 Stat. 2779 (1984).

⁵ Pub. L. No. 102-385, 106 Stat. 1460 (1992). See Section 612 of the Communications Act of 1934, as amended, 47 U.S.C. § 532.

⁶ 8 FCC Rcd 5631 (1993).

addressing maximum reasonable rates, reasonable terms and conditions of use, minority and educational programming, and procedures for resolution of disputes.⁷ The Commission modified some of its leased access rules in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Second Report and Order on Reconsideration of the First Report and Order (“*Second Order*”).⁸

III. DISCUSSION

3. In its petition Falcomm alleges that: (1) Comcast has illegally contracted operations of its leased access channels to the City of Waterford, Michigan and (2) Comcast’s arrangements with the City of Waterford incur additional costs to the leased access user, specifically with regard to play-back equipment fees.⁹

4. Comcast responds that it has been upgrading its Waterford system, including its leased access studio that normally houses its commercial leased access play-back facilities.¹⁰ Comcast states that during the refurbishment of the system’s leased access studio, the City permitted Comcast to locate play-back equipment in the City’s studio. Comcast argues that by using the City’s facilities, it did not alienate, assign or transfer its leased access responsibility to the City.¹¹ To the contrary, Comcast contends that its temporary arrangement with the City served to facilitate the needs of its leased access users. Comcast states that the refurbishment of its studios is now complete and its arrangement with the City is no longer in effect.¹²

5. During the period when the arrangement was in effect, Comcast states that Falcomm was informed that a \$10.00 hourly play-back fee would be required to cablecast programming on the system’s leased access channel after 12:00 midnight.¹³ Comcast asserts that the fee was necessary and permissible under the Commission’s rules because after 12:00 midnight system personnel normally would not be available to play Falcomm’s tapes. According to Comcast, it offered Falcomm access to Comcast’s facilities on the same terms and conditions that it offered to other leased access users.¹⁴ Falcomm disputed Comcast’s play-back charge and argued that it was a new charge not previously assessed by Comcast.¹⁵ In lieu of the charge, Falcomm requested permission to install its own automatic play-back equipment at Comcast’s studio and Comcast refused the request.¹⁶

6. Section 76.971(c) of the Commission’s rules regarding commercial leased access terms

⁷ See 47 C.F.R. §§ 76.970, 76.971, 76.975 and 76.977.

⁸ 12 FCC Rcd 5267 (1997). See 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).

⁹ Falcomm Petition at 1.

¹⁰ Comcast Reply at 1.

¹¹ *Id.* at 2.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Falcomm Petition at 1-2.

¹⁶ *Id.* at 2; Comcast Reply at 2.

and conditions states in pertinent part:

Cable operators are required to provide unaffiliated leased access users the *minimal* level of technical support necessary for users to present their material on the air, and may not unreasonably refuse to cooperate with a leased access user in order to prevent that user from obtaining channel capacity. Leased access users must reimburse operators for the reasonable cost of any technical support actually provided by the operator that is beyond that provided for non-leased access programmers on the system (Emphasis added).¹⁷

In this matter, Comcast represents that its personnel normally are not on duty after 12:00 midnight and that after this time period it charges the same rate of \$10.00 per hour for its tape play-back services to both leased access and non-leased access programmers alike. Comcast also represents that the same charges for play-back services were applicable whether the services were rendered by Comcast or whether the services were rendered by the City of Waterford.¹⁸ Even if Falcomm's assertion were true that these charges were not previously assessed by Comcast, such charges would not automatically run afoul of our rules as long as Comcast did not discriminate between leased access and non-leased access users in imposing the charges. We also find that the \$10.00 per hour play-back fee is not unreasonable. The Cable Services Bureau has previously held that fees of \$14.00 per hour and \$9.00 per hour for similar services were not unreasonable fees.¹⁹

7. In addition, Comcast represents that it does not have any automatic play-back equipment installed in its Waterford system and is not providing this service to any other programmer.²⁰ Comcast argues that it is under no duty to install and maintain such third party equipment for Falcomm.²¹ Comcast contends that the logistics of accepting such equipment from various programmers, as well as the insurance liability issues involved, make such a requirement impractical.²² We find no violation of our rules because Comcast has provided Falcomm with the minimal level of technical support as required by the rules by offering Falcomm the same rate for tape play-back services after 12:00 midnight that it offers to other leased access programmers and to non-leased access programmers.²³ We do not believe that Comcast's refusal to install Falcomm's automatic play-back equipment is unreasonable given that Comcast does not provide this service to other programmers.

8. Finally, Falcomm also provides no evidence that Comcast illegally assigned its leased access channel capacity to the City of Waterford. As Comcast explains, its temporary arrangement with the City was undertaken only to house its leased access facilities while its own studio was being refurbished. We find that this temporary arrangement with the City did not violate the commercial leased access terms and conditions as provided for in our rules.

¹⁷ 47 C.F.R. § 76.971(c).

¹⁸ Comcast Reply at 3.

¹⁹ See *Aamen TV Ministry v. MediaOne*, 13 FCC Rcd 22244, 22247 (1998); *Lorilei Communications Inc v. Yorba Linda Cable TV Co.*, 12 FCC Rcd 9905, 9909 (1997).

²⁰ Comcast Reply at 4.

²¹ *Id.*

²² *Id.*

²³ See 47 C.F.R. § 76.971(c).

9. Accordingly, **IT IS ORDERED** that the petition filed by Falcomm Communications against Comcast Communications, Inc., pursuant to Section 76.975(b) of the Commission's rules, 47 C.F.R. § 76.975(b), **IS DENIED**.

10. This action is taken pursuant to authority delegated pursuant to Section 0.321 of the Commission's rules.²⁴

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

²⁴ 47 C.F.R. § 0.321.