

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

In the Matter of:)	
)	
Kenney Broadcasting Corporation)	
)	CSR 5494-L
v.)	
)	
Time Warner Communications)	
)	
Petition for Leased Access)	

MEMORANDUM OPINION AND ORDER

Adopted: August 16, 2001

Released: August 20, 2001

By the Deputy Chief, Cable Services Bureau:

1. Kenney Broadcasting Corporation (“Kenney”) filed a request for relief pursuant to Section 76.975 of the Commission’s rules¹ alleging that Time Warner Communications (“Time Warner”) failed to respond to a written request submitted on October 4, 1999 for carriage of proposed commercial leased access programming on Time Warner’s Orlando, Florida cable system in violation of the Commission’s commercial leased access regulations. Time Warner filed a response to the petition which states that a packet containing a leased access application and information concerning its leased access policies, procedures, and rates was sent to Kenney on January 12, 2000.

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 of cable operators.² Channel set-aside requirements were established proportionate to a system's total activated channel capacity. The Cable Television Consumer Protection and Competition Act of 1992³ revised the leased access requirements and directed the Commission to implement rules to govern this system of channel leasing. *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”),⁴ the Commission initially adopted rules for leased access

¹47 C.F.R. § 76.975.

²Pub. L. No. 98-549, 98 Stat. 2779 (1984).

³Pub. 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).

⁴8 FCC Rcd 5631 (1993).

addressing maximum reasonable rates, reasonable terms and conditions of use, minority and educational programming, and procedures for resolution of disputes.⁵ 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 and Second Order on Reconsideration of the First Report and Order ("*Second Order*").

3. The record shows that Time Warner has satisfied Kenney's complaint by providing a leased access application and information concerning its leased access policies, procedures, and rates. Accordingly, Kenney's petition will be dismissed. However, Time Warner failed to send the leased access information within fifteen calendar days of the request as required by Section 76.970(h) of the Commission's rules.⁶ In view of this failure to comply with the Commission's commercial leased access regulations, we caution Time Warner that further failure to provide commercial leased access information on a timely basis may result in a notice of apparent liability for forfeiture pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 1.80 and 76.975(f) of the Commission's rules.⁷

4. In view of the above, **IT IS HEREBY ORDERED** that the petition for relief filed in the captioned proceeding by Kenney Broadcasting Corporation **IS DISMISSED**.

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

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson, Deputy Chief
Cable Services Bureau

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

⁶47 C.F.R. § 76.970(h).

⁷47 U.S.C § 503(b); 47 C.F.R §§ 1.80 & 76.975(f).

⁸47 C.F.R § 0.321.