

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

In the Matter of:)	
)	
Engle Broadcasting)	
)	CSR 5601-L
v.)	
)	
Comcast of Southern New Jersey, Inc.)	
)	
Commercial Leased Access)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: September 21, 2001

Released: October 2, 2001

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Engle Broadcasting (“Engle”) has filed a complaint pursuant to Section 76.975 of the Commission’s rules¹ alleging that Comcast of Southern New Jersey, Inc. (“Comcast”) is in violation of the Commission’s commercial leased access regulations by failing to transmit Engle’s leased access programming between the headends of two of its cable systems and by failing to provide space for antennas for the reception of Engle’s programming on a tower serving one of those headends. Engle also requests imposition of forfeitures on Comcast for repeated and willful violations of its obligations under the leased access regulations. Comcast filed an Opposition to the petition.²

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 of cable operators.³ 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.⁴ In *Implementation*

¹See 47 C.F.R. §§ 76.970, 76.971 & 76.975.

²Engle also filed a Rebuttal to Opposition. Although Section 76.975 does not provide for the filing of a response to the cable operator’s opposition, Engle’s rebuttal will be considered in order to have a more complete record.

³Pub. L. No. 98-549, 98 Stat. 2779 (1984).

⁴Pub. L. No. 102-385, 106 Stat. 1460 (1992). See Section 612(b) of the Communications Act of 1934, as amended, (continued...)

of the Cable Television Consumer Protection and Competition Act of 1992, Report and Order and Further Notice of Proposed Rulemaking ("*Rate Order*"),⁵ the Commission adopted rules for leased access addressing maximum reasonable rates, reasonable terms and conditions of use, minority and educational programming, and procedures for resolution of disputes.⁶ 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*").⁷

III. DISCUSSION

A. Transmission of Engle's Programming Between Headends

3. Comcast operates two separate cable systems located in southern New Jersey, one served from a headend located at Vineland, New Jersey, and the other from a headend located at Pleasantville, New Jersey.⁸ The Vineland system receives most of its off-air television broadcast signals from a tower located at Turnersville, New Jersey.⁹ The Pleasantville system receives off-air signals from towers located at Egg Harbor, New Jersey and New Castle, Delaware. Comcast also operates a communication facility consisting of a 680 mile fiber "ring" that links several of its cable systems serving the Delaware Valley, including the systems at Vineland and Pleasantville.¹⁰ Among other things, Comcast utilizes the fiber ring for distribution of non-broadcast signals and several broadcast signals to the Vineland and Pleasantville systems.¹¹

4. Engle is the licensee of low power television station WPSJ-LP serving four communities in southern New Jersey.¹² Comcast received the programming of WPSJ-LP off-air at the towers serving the Vineland and Pleasantville systems until recently when Engle commenced delivering programming to the Pleasantville system via microwave.¹³ Engle alleges that Comcast is in violation of Section 76.971(c) of the Commission's rules by not providing for the transmission of Engle's leased access programming on the fiber ring from the Vineland headend to the Pleasantville headend.¹⁴ Engle contends that since Comcast is utilizing the fiber ring to provide non-leased access programming on the Vineland and Pleasantville cable

(...continued from previous page)

47 U.S.C. §532(b).

⁵8 FCC Rcd 5631 (1993).

⁶See 47 C.F.R. §76.970, 76.971, 76.975 and 76.977 (1995).

⁷12 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).

⁸Comcast Opposition at 3-5.

⁹*Id.*

¹⁰*Id.*

¹¹*Id.*

¹²Engle Complaint at 1.

¹³Comcast Opposition at 5.

¹⁴Engle's leased access programming consists of "live, viewer interactive programs of an immediate and public service nature," which cannot be delivered by videotape. Engle Complaint at 1.

systems, it is required by the technical support requirement of Section 76.971(c) to transport Engle's leased access programming on the fiber ring from the Vineland headend to the Pleasantville headend.¹⁵

5. Section 76.971(c) requires cable operators to provide leased access programmers with "the minimal level of technical support necessary for users to present their material" and "may not unreasonably refuse to cooperate with a leased access user in order to prevent that user from obtaining channel capacity."¹⁶ By way of explaining whether cable operators may charge for technical support provided to leased access users, the Commission gave as an example, "the operator cannot add a charge [above the maximum leased access rate] for providing a satellite dish if it provides that type of technical support to non-leased access programmers at no additional charge."¹⁷ Nothing in Section 76.971(c) or the *Second Order* suggests that a cable operator must transmit leased access programming from one cable system to another. In the case before us, Comcast uses the fiber ring for transmitting Comcast programming from a central processing point to its cable systems serving communities in the Delaware Valley. In that respect, the fiber ring serves a function entirely different from that of providing channel capacity on a particular cable system for non-leased access programming in the example discussed by the Commission. Accordingly, we reject the contention that Comcast is in violation of Section 76.971(c) by refusing to transmit Engle's programming between cable systems on the fiber ring.

B. Tower Space Leasing

6. Engle also complains of Comcast's refusal to provide antenna space for the reception of Engle's programming on the tower serving the headend of the Pleasantville cable system. Engle asserts that Comcast is providing for microwave transmission of the signals of certain television broadcast stations to the Pleasantville cable system.¹⁸ Since Comcast provides for the carriage of those broadcast stations' signals, Engle argues that Comcast must also provide antenna space for the reception of microwave transmission of Engle's programming to the Pleasantville cable system. We reject these contentions. Engle's assertions regarding Comcast's provision of microwave transmission of broadcast stations signals are unverified. On the other hand, Comcast has provided a verified statement that it is not providing interconnection between broadcast station studios and its cable system headends.¹⁹ We resolve this evidentiary conflict by accepting the verified statement offered by Comcast. Moreover, Comcast stated that the tower serving the Pleasantville headend has been sold to a tower operator under an arrangement that permits its antennas to remain on those towers. It also stated that the antennas on the tower are used only for the purpose of receiving "must carry" television broadcast stations and not for non-leased access programming that may invoke the technical support requirements of Section 76.971(c).²⁰ Comcast is not required to acquire or make arrangements with the tower owner for antenna tower space for Engle's benefit.

¹⁵Engle contends that Section 76.971(c) obligates Comcast to provide the same level of technical support for its leased access programming as that provided to non-leased access programmers. *Id.* at 2-4.

¹⁶47 C.F.R. § 76.971(c).

¹⁷*See Second Order* at 5335.

¹⁸*See* Engle complaint at 4-5; Engle Rebuttal at 5-6.

¹⁹*See* Comcast Opposition at 8, n. 20 and Attachments 2 and 4.

²⁰*Id.* at 10-12.

7. The general principle embodied in the leased access rules is that cable operators must make available for leased access programming the same type of access that is made available on their system for the distribution of non-leased access programming. System operators generally provide non-leased access programmers with channel capacity and the minimal level of technical support necessary to input the programming into the system. The Commission's rules therefore require that operators provide a similar level of technical support for unaffiliated leased access users.²¹ However, system operators do not have any responsibility for assisting in the delivery of programming from a programmer's studio or production facility to the headend or input point of the cable system. Therefore, it follows that cable operators are not required to provide capacity between a leased access programmer's studio and the cable operator's headend in order to provide the leased channel access.²²

C. Forfeitures

8. Engle requests a forfeiture order against Comcast for alleged repeated and willful violations under the leased access regulations. We deny this request. First, no credible evidence of any repeated or willful violations by Comcast has been provided on the record. As indicated above, Engle failed to establish that Comcast violated the leased access regulations by refusing to transmit Engle's programming from the Vineland headend to the Pleasantville headend via the fiber ring or by refusing to provide antenna tower space at Pleasantville. Secondly, Comcast has provided access for Engle's leased access programming on both the Vineland and Pleasantville cable systems, first by off-air pickup in both cases and later via microwave radio at Pleasantville. Engle's allegation that Comcast failed to comply with the leased access regulations in other instances where Engle withdrew previously filed leased access complaints is insufficient to establish that repeated or willful violations have occurred.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS HEREBY ORDERED**, that the complaint filed by Engle Broadcasting in File No. CSR 5601-L **IS DENIED**.

10. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules.²³

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson, Deputy Chief
Cable Services Bureau

²¹See 47 C.F.R. § 76.971(c).

²²*Response to Request for Clarification of Stephen R. Ross, Esq.*, Letter Ruling, DA-1074, CSB-ILR 97-3 (released May 2, 1997), 1997 WL 268725 (FCC).

²³47 C.F.R. § 0.321.