

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

In the Matter of:	)	
	)	
United Multimedia Productions, Inc. and	)	
Hamptons Video Guide, Inc.	)	CSR 5557-L
	)	
v.	)	
	)	
CSC Acquisition-New York, Inc.	)	
	)	
Commercial Leased Access	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: March 1, 2001**

**Released: March 5, 2001**

By the Deputy Chief, Cable Services Bureau:

**I. INTRODUCTION**

1. United Multimedia Productions, Inc. and Hamptons Video Guide, Inc. (“Petitioners”) have filed complaints pursuant to Section 76.975 of the Commission’s rules<sup>1</sup> alleging that CSC Acquisition-New York, Inc. (“CSC”) is charging excessive fees for commercial leased access service, imposing fees for videotape insertion in excess of actual cost, and demanding carriage of liability insurance where no need exists, in violation of the Commission’s regulations applicable to commercial leased access service.<sup>2</sup> CSC Holdings, Inc. filed an Opposition to the petition on behalf of CSC, operator of the cable system distributing Petitioners’ leased access programming in Riverhead, New York.<sup>3</sup>

**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

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<sup>1</sup>See 47 C.F.R. §§ 76.970, 76.971 & 76.975.

<sup>2</sup>Petitioners provide television programming on CSC’s cable system by delivering program videotapes to CSC. Petition at 1-2. CSC Holdings, Inc. is the parent company of CSC. Opposition at 1.

<sup>3</sup>Petitioners also filed a Motion to Accept Additional Pleadings, and CSC filed an Opposition to Motion to Accept Additional Pleadings. The Commission’s rules applicable to commercial leased access channels provide only for the filing of a petition for relief by leased access programmer and a response by cable operators.<sup>3</sup> We have reviewed these pleadings and have determined that neither of them presents any new information that requires consideration. Letters were submitted on an *ex parte* basis on February 11, 2001 by D. Du Pois and on February 23, 2001 by CSC. These letters will be placed in the public file. See 47 C.F.R. 1.1212(d).

a desire to distribute video programming free of editorial control of cable operators.<sup>4</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>5</sup> In *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order and Further Notice of Proposed Rulemaking ("*Rate Order*"),<sup>6</sup> 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.<sup>7</sup> 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*").<sup>8</sup>

### III. DISCUSSION

#### A. Leased Access Usage Rates

3. Petitioners assert that CSC has tripled the fees for leased access service from the rates offered during the summer of 1999.<sup>9</sup> Petitioners state that they requested a detailed accounting from CSC of the method used to calculate rates for leased access usage, but that CSC responded with a letter stating that the rates are within the Commission's guidelines.<sup>10</sup> CSC requests dismissal of Petitioners' allegations regarding usage rates on the grounds that the procedures for resolving usage rate disputes set forth in the Commission's rules have not been followed.<sup>11</sup> CSC contends that its usage rates are calculated in accordance with the Commission's rules, and provided a description of a nine-step analysis used to arrive at usage rates.<sup>12</sup>

4. We find that Petitioners' request to CSC for an accounting of CSC's method for determining leased access rates invokes the procedures set forth in the Commission's rules for resolving leased access rate disputes. Those rules provide that parties to a dispute over leased access rates "shall have five business days to agree on a mutually acceptable accountant from the date on which the programmer provides the cable operator with a written request for a review of its leased access rates," and

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<sup>4</sup>Pub. L. No. 98-549, 98 Stat. 2779 (1984).

<sup>5</sup>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>6</sup>8 FCC Rcd 5631 (1993).

<sup>7</sup>See 47 C.F.R. §76.970, 76.971, 76.975 and 76.977 (1995).

<sup>8</sup>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).

<sup>9</sup>See Petitioners' May 22, 2000 and August 28, 2000 letters.

<sup>10</sup>See Petitioners' May 22, 2000 letter at p. 2 and letters from Dee Du Bois to CSC dated March 29, 2000, and from CSC to Dee Du Bois dated February 10, 2000.

<sup>11</sup>See 47 C.F.R. S 76.975(b)(2) (Determination of independent accountant must be obtained prior to filing petition with Commission alleging unreasonableness of leased access rates).

<sup>12</sup>Opposition at 8-10.

for further procedures in event of failure of agreement in selecting an accountant.<sup>13</sup> Merely stating that its rates are within the Commission's guidelines and providing a description of the steps used to develop rates in a pleading filed with Commission, as CSC has done here, does not satisfy those procedures. Accordingly, we direct CSC to initiate the procedures for resolving usage rate disputes set forth in the Commission's rules with respect to the leased access usage charges offered to Petitioners.

## **B. Videotape Insertion Fees**

5. Petitioners assert that a tape insertion fee of \$25 for every two-hour time block of channel usage imposed by CSC exceeds actual cost in violation of Section 76.971 of the Commission's rules. Petitioners assert that, although they propose to present programming 24 hours per day, CSC applies the \$25 insertion fee every two hours because tapes can be played only in two hour time blocks. Petitioners state that CSC's leased access usage rates result in a cost of approximately \$18.13 for each of 110 half-hour time slots in which many of the tapes are played.<sup>14</sup> Petitioners further assert that CSC pays employees a salary of \$10.68 per hour.<sup>15</sup> They then compare those figures with the \$25 insertion fee and contend that this comparison demonstrates the unreasonableness of the \$25 insertion fees. Petitioners state that they deliver the tapes to CSC, which merely plays the tapes without providing any equipment other than the tape players. Petitioners argue that the insertion fees are not otherwise justified and amount to an attempt to impose more charges than permitted by the usage rate limitations imposed by the Commission's rules.

6. CSC contends that it must devote approximately two hours of pre-air attention for each hour of Petitioners' taped programming, made up of quality control analysis, editing taped programming onto reels for airing, manually inserting the resulting programming media, and programming the automated playback equipment. CSC further asserts that an operator must be on hand to insert the programming into tape players, play the tapes, and monitor for equipment failure. CSC also states that the majority of Petitioners' programming is aired in late evenings on Saturday or Sunday when CSC's offices are closed or operating with greatly reduced staff. CSC claims an average hourly salary for production technicians of \$13.05, resulting in a three-hour average cost of \$39.15 for technician salary.<sup>16</sup> CSC states that no cost of employee benefits or other labor overheads are included in these charges, and that it charges only \$25 in recognition that the technicians are able to devote attention to other tasks during presentation of Petitioners' programming.<sup>17</sup>

7. Based on this record, we find CSC's \$25 tape insertion fee to be not unreasonable and to be related to relevant costs. Moreover, CSC's \$25 tape insertion fee is not unreasonably out of line with other technical service fees we have considered in light of the Commission's conclusions that a cable operator may charge "for the reasonable cost of providing technical support to a leased access programmer that is not also provided to non-leased access programmers on the system."<sup>18</sup> In this connection, CSC has shown that it does not provide tape insertion for non-leased access programmers on its system.<sup>19</sup> CSC

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<sup>13</sup>See 47 C.F.R. S 76.975(b)(2).

<sup>14</sup>See May 22, 2000 and August 28, 2000 letters.

<sup>15</sup>*Id.*

<sup>16</sup>Opposition at 5.

<sup>17</sup>*Id.* at 4-5.

<sup>18</sup>*Second Report*, 12 FCC Rcd 5267,5325 (1997).

<sup>19</sup>Opposition at 4-5.

represented that one of the pre-insertion tasks involves editing taped programming onto air reels for presentation. In view of this representation, we find the tape insertion fee not unreasonable, provided it is imposed only in connection with each process of editing taped programming onto air reels for presentation or with each required actual tape insertion for direct play from tape.

### C. Liability Insurance

8. Petitioners also contend that CSC is demanding carriage of liability insurance with CSC as an additional named insured party, although they have not been required to carry such insurance in the past from other cable systems. Petitioners take the position that it is sufficient merely to place a disclaimer at the top and bottom of the program indemnifying the cable operator from any liability. Petitioners argue that CSC's insurance demand is another attempt by CSC to thwart their purchase of commercial leased access time, and request an order requiring refund of the \$474.32 premium.

9. A cable operator's right to require reasonable liability insurance coverage for leased access programming was initially discussed in *Anthony Giannotti v. Cablevision Systems Corporation*.<sup>20</sup> The Commission subsequently confirmed that the regulations concerning commercial leased access do not deny cable operators the right to require reasonable liability insurance coverage for leased access programming.<sup>21</sup> Specific conditions or limits regarding the amount of coverage or the type of insurance policy that operators may require are not specified in the regulations.<sup>22</sup> Instead, insurance requirements must be reasonable in relation to the objective of the requirement and are based on the operator's practices with respect to insurance requirements imposed on non-leased access programmers, the likelihood that the leased access programming will pose a liability risk for the operator, previous instances of litigation arising from the leased access programming, and any other relevant factors.<sup>23</sup> The burden of proof in establishing reasonableness was placed on cable operators.<sup>24</sup>

10. We find that CSC has failed to meet its burden of proof with respect to its imposition of insurance requirements on Petitioners. CSC stated that the insurance policy required provides coverage for claims of bodily injury or property damage, damage to cable system headends and equipment, slander of cable system employees, and invasion of cable system and employee privacy by third parties. CSC has not shown, however, that the required insurance covers potential liability arising from the nature or carriage of Petitioners' leased access programming.<sup>25</sup> Instead, the general liability matters for which CSC demands insurance coverage from Petitioners appear substantially no different from those confronted by any business enterprise that interfaces with the public. Accordingly, we find that CSC's requirement that Petitioners provide what amounts to re-insurance coverage for matters normally covered by its own insurance policies to be unreasonable, and order CSC to reimburse Petitioners' cost of such insurance.

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<sup>20</sup>11 FCC Rcd 10441 (CSB 1996) (Operator's right to require reasonable liability insurance coverage for leased access programming confirmed).

<sup>21</sup>See *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, 12 FCC Rcd 5267, 5324 (1997) (*Second Report*).

<sup>22</sup>*Id.*

<sup>23</sup>*Id.*

<sup>24</sup>See *Second Report*, 12 FCC Rcd at 5324 and Appendix D, Revised Rules, Section 76.971(d).

<sup>25</sup>See *Second Report*, 12 FCC Rcd at 5324.

**D. Other Matters**

11. Petitioners also complain that CSC requires payment of fifty percent of programming presentation costs by certified check in advance of presentation.<sup>26</sup> The Commission's rules provide that cable operators may require reasonable security deposits or other assurances from users who are unable to pay in full for access to leased channels.<sup>27</sup> The record contains no information regarding Petitioners' ability to pay in full for the channels they have leased, nor have they shown that the requirement for advance payment of fifty percent of its programming presentation costs is unreasonable. Finally, Petitioners also complain about alleged failures of carriage during the summer of 1999 and at earlier times. The Commission's rules require that allegations of leased access violations be presented to the Commission within sixty days of their occurrence.<sup>28</sup> Petitioners have failed to present this allegation with the timeliness required by the Commission's rules, and it will be dismissed accordingly.

**IV. ORDERING CLAUSES**

12. Accordingly, **IT IS HEREBY ORDERED**, that the complaints filed by United Multimedia Productions, Inc. and Hamptons Video Guide, Inc. **ARE GRANTED** to the extent indicated above and **DENIED** in all other respects.

13. **IT IS FURTHER ORDERED** that CSC Acquisition-New York, Inc. shall initiate procedures set forth in Section 76.975 of the Commission's rules for the selection of an independent accountant or accountants for the purpose of establishing the reasonableness of its rates for leased access channels on its cable system serving Riverhead, New York within fifteen (15) days from the release date of this Order.

14. **IT IS FURTHER ORDERED** that CSC Acquisition-New York, Inc. shall reimburse United Multimedia Productions, Inc. and Hamptons Video Guide, Inc. for the cost of any insurance policy purchased as a condition to the provision of leased access channels on its cable system serving Riverhead, New York, within fifteen (15) days from the release date of this Order.

15. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules.<sup>29</sup>

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson, Deputy Chief  
Cable Services Bureau

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<sup>26</sup>Petitioners' May 22, 2000 letter at p. 2.

<sup>27</sup>47 C.F.R. § 76.971(d).

<sup>28</sup>47 C.F.R. § 76.975(d).

<sup>29</sup>47 C.F.R. § 0.321.