

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

In the Matter of:	)	
Frank J. Vitale,	)	
d/b/a Fal-Comm Communications	)	
	)	CSR-5379-L
v.	)	
	)	
MediaOne of Metropolitan Detroit, Inc.	)	
	)	
Leased Access Petition	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: March 15, 2001**

**Released: March 19, 2001**

By the Deputy Chief, Cable Services Bureau:

**I. INTRODUCTION**

1. Frank J. Vitale d/b/a Fal-Comm Communications (“Fal-Comm”) filed the above-captioned petition pursuant to Section 76.975(b) of the Commission’s rules against MediaOne of Metropolitan Detroit, Inc. (“MediaOne”), operator of a cable system serving Dearborn Heights-Westland, Michigan.<sup>1</sup> MediaOne filed a response to the petition.

**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 by cable operators.<sup>2</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>3</sup> 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*”),<sup>4</sup> the Commission adopted new rules for leased access addressing maximum reasonable rates, reasonable terms and conditions of use, minority and educational

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<sup>1</sup>47 C.F.R. §76.975.

<sup>2</sup>Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984).

<sup>3</sup>Cable 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).

<sup>4</sup>8 FCC Rcd 5631 (1993).

programming, and procedures for resolution of disputes.<sup>5</sup> The Commission modified some of its leased access rules in *In the Matter of 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 Report*”).<sup>6</sup>

### III. DISCUSSION

3. Fal-Comm, an independent producer of video programming in the Metro-Detroit area, states that on, February 7, 1999, MediaOne’s Dearborn Heights-Westland system failed to air two half hour programs from 11 am – 12 noon, claiming modulator error.<sup>7</sup> Fal-Comm alleges that this was the latest of nineteen previous programs that had not been aired or had signal interruption since June 1998, when Fal-Comm signed a Channel Lease Agreement with MediaOne.<sup>8</sup> Fal-Comm contends that MediaOne was notified following each incident and their reason for non-airing or signal interruption recorded.<sup>9</sup> Fal-Comm contends further that the overwhelming number of incidents reflects a willful disregard for Fal-Comm’s programming and failure to meet the requirements of Section 76.975(b).<sup>10</sup> Fal-Comm argues that MediaOne’s failure to provide the minimal level of technical support necessary for Fal-Comm to present its programming adds to its cost of doing business, increases customer dissatisfaction, undermines credibility, results in loss of viewers, and discourages Fal-Comm from pursuing leased access capacity on the MediaOne system.<sup>11</sup> Fal-Comm strongly urges that the Commission impose fines, penalties or administrative action on MediaOne for violations of the Commissions rules.<sup>12</sup>

4. In its response, MediaOne states that it executed a Channel Lease Agreement with Fal-Comm governing the terms and conditions upon which Fal-Comm’s programming would be aired on MediaOne’s systems.<sup>13</sup> MediaOne asserts that the petition should be dismissed because it fully complied with the Channel Lease Agreement and with Section 76.971(c).<sup>14</sup>

5. Pursuant to Section 76.971(c), 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.<sup>15</sup> Section 20(a) of the parties Channel Lease Agreement provides that in the event MediaOne fails to air petitioner’s programming, petitioner is entitled to either a refund or credit, or a

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

<sup>6</sup>12 FCC Rcd 5267 (1997). See also *In the Matter of 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>7</sup>Petition at 1.

<sup>8</sup>*Id.* at 1.

<sup>9</sup>*Id.*

<sup>10</sup>*Id.*

<sup>11</sup>*Id.*

<sup>12</sup>*Id.* at 2.

<sup>13</sup>MediaOne Response at 1.

<sup>14</sup>*Id.*

<sup>15</sup>47 C.F.R. § 76.971(c).

re-airing of the programming at a comparable timeslot.<sup>16</sup> Pursuant to the Channel Lease Agreement, and by letter dated February 12, 1999, MediaOne notified Petitioner that time was available for the “make good” re-airings.<sup>17</sup>

6. The record shows that MediaOne complied with the Channel Lease Agreement by promptly offering “make good” re-airings.<sup>18</sup> Accordingly, we cannot conclude on this record that MediaOne has violated our leased access rules. However, MediaOne’s undisputed failure to air the two programs at issue in this proceeding, and perhaps as many as 20 out of Fal-Comm’s 56 programs during the period June 20, 1998 through March 28, 1999, is of genuine concern. If a pattern of inadequate service persists, it could be the basis for concluding that that MediaOne has failed to provide the minimum level of technical support required by Section 76.971(c). In such case, we could issue a notice of apparent liability for forfeiture pursuant to Section 503(b) of the Communications Act and Sections 1.80 and 76.975(f) of the Commission’s rules.<sup>19</sup>

#### IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petition for relief of Fal-Comm Communications (Fal-Comm) in File No. CSR 5379-L **IS DENIED**.

8. This action is taken pursuant to authority delegated by Section 0.321 of the Commission’s rules.<sup>20</sup>

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Cable Services Bureau

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<sup>16</sup>MediaOne Response at Exhibit A, ¶ 20.

<sup>17</sup>MediaOne Repsonse at 1, Exhibit B.

<sup>18</sup>*Id.*

<sup>19</sup>47 U.S.C. §503(b); 47 C.F.R. §1.80; C.F.R. §76.975(f).

<sup>20</sup>47 C.F.R. §0.321.