

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

In the Matter of:)	
)	
Falcomm Communications)	
)	CSR-5589-L
v.)	
)	
MediaOne of Southeast Michigan, Inc.)	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: March 20, 2001

Released: March 22, 2001

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 MediaOne of Southeast Michigan, Inc. (“MediaOne”) serving Dearborn Heights and Westland, Michigan has violated Section 76.971(c) of the Commission’s rules regarding commercial leased access terms and conditions.² 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 the 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 the system of channel leasing.⁴ 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*”),⁵ the Commission adopted rules for leased access

¹ 47 C.F.R. § 76.975(b).

² 47 C.F.R. § 76.971(c).

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

⁴ 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.

⁵ 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.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 on Reconsideration of the First Report and Order (“*Second Order*”).⁷

III. DISCUSSION

3. In its petition Falcomm alleges that Media One has violated Section 76.971(c) of the Commission’s rules regarding commercial leased access terms and conditions by failing to provide Falcomm with the minimal level of technical support necessary to present its programming on the air.⁸ Falcomm asserts that MediaOne failed to respond in a timely fashion to Falcomm’s inquiries regarding the interruption of its “Fantasy Adventure Series” programming aired on Channel 25 of MediaOne’s Dearborn Heights-Westland cable system during an approximately six week period beginning in late February 2000.⁹ As a result, Falcomm contends that MediaOne’s actions have resulted in increased costs to Falcomm’s business and have generated customer dissatisfaction resulting in additional financial losses.¹⁰

4. MediaOne responds that it has not withheld technical support from Falcomm and has not violated Section 76.971(c) of the Commission’s rules.¹¹ MediaOne states that Falcomm’s tapes are inserted at MediaOne’s Dearborn Heights, Michigan playback facility, which is a facility that serves both the Dearborn Heights/Westland and the Canton/Northville/Plymouth, Michigan systems.¹² According to MediaOne, the distribution problem affecting Falcomm’s programming was limited to the City of Westland, Michigan only.¹³ MediaOne asserts that initial tests indicated that Falcomm’s programming was leaving the playback facility and successfully entering the distribution system from its headend.¹⁴ Thereafter, MediaOne states that several subsequent tests indicated a problem downstream on the system affecting the City of Westland.¹⁵ According to MediaOne, this problem was corrected as soon as it was identified.¹⁶

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

⁷ 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).

⁸ Falcomm Petition at 1; 47 C.F.R. § 76.971(c).

⁹ *Id.* at 1, Exhibit A.

¹⁰ *Id.* at 1.

¹¹ MediaOne Response at 2; 47 C.F.R. § 76.971(c). MediaOne also notes that most of Falcomm’s petition refers to a situation unrelated to this complaint (*i.e.*, MediaOne’s refusal to air the “Fantasy Adventure tape 150 episode 12,” which according to MediaOne allegedly contains indecent material. See Letter from Michael J. Fitzsimmons, MediaOne, to Dick Vitale, Falcomm, dated June 27, 2000 - Exhibit D, Falcomm Petition). For the record, MediaOne notes that Falcomm’s petition does not allege that MediaOne violated the Commission’s rules by pulling from play the alleged indecent programming. MediaOne Response at 1, n.2.

¹² MediaOne Response at 2.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

5. MediaOne also notes that it executed with Falcomm a Channel Lease Agreement regarding the terms and conditions that govern the airing of Falcomm's programming on MediaOne's systems in Dearborn Heights and Westland. MediaOne states that Section 20 of that agreement outlines the remedies available to Falcomm if the programming is aired in a technically degraded form or not aired at all.¹⁷ Under either of those circumstances, Section 20 provides that Falcomm is entitled to either: (1) a refund or credit, on a prorated basis, for the amount of any lease payments attributable to the time period during which the programming was not delivered; or (2) a recablecast of the programming not shown in a comparable time slot.¹⁸ MediaOne states that Falcomm availed itself of the first remedy by withholding payment for all of its programming aired on both the Dearborn Heights/Westland and Canton/Plymouth/Northville, Michigan systems while MediaOne worked to correct technical problems.¹⁹ MediaOne notes that the technical difficulties that it encountered between late February and May 2000 only affected the distribution of Falcomm's programming in the City of Westland.²⁰ MediaOne asserts that because Falcomm's programming was successfully aired in 69% of the viewing area while payment to MediaOne was withheld for all of Falcomm's programming aired on MediaOne's systems in the southeast Michigan area, Falcomm was fairly treated under the terms of the parties' agreement.

6. Based on the record before us, we find that Falcomm has presented no evidence that MediaOne has violated Section 76.971(c) of the Commission's rules regarding commercial leased access terms and conditions. Section 76.971(c) of the Commission's rules requires cable operators to provide unaffiliated leased access users with 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.²¹ MediaOne provided Falcomm with channel capacity to air its programming and did not withhold technical support from Falcomm. MediaOne admits that it did encounter some technical difficulty in airing Falcomm's programming in the City of Westland from late February until May 2000. While Falcomm argues that MediaOne did not respond to its complaints about program interruption in a timely manner, MediaOne states that initial tests of its system did not indicate a problem. We also note that while the record is unclear in this matter, it appears that Falcomm first noticed that its programming was not being properly aired by MediaOne in late February 2000, yet it did not forward a formal letter of complaint to MediaOne until April 10, 2000.²² Again, while the record is not clear regarding the time period involved, MediaOne did act on Falcomm's complaint and conducted follow-up tests, which indicated a technical problem downstream on the system affecting only the City of Westland. Once MediaOne identified that problem, it was corrected. During this time period, Falcomm withheld payment from MediaOne in accordance with the parties' Channel Lease Agreement. Falcomm has not challenged the remedies available to it thereunder. In view of the foregoing, we find that MediaOne has not violated the Commission's rules regarding commercial leased access terms and conditions.

7. Accordingly, **IT IS ORDERED** that the petition filed by Falcomm Communications

¹⁷ *Id.*

¹⁸ *Id.* at 3, Exhibit 1.

¹⁹ *Id.* at 3.

²⁰ *Id.*

²¹ 47 C.F.R. § 76.971(c).

²² In the April 10, 2000 letter to MediaOne, Frank Vitale, Falcomm, states "During the last six (6) weeks Fal-Comms [stet] programming on channel 25 of the Dearborn Heights-Westland system (10:30PM-11:00PM) has been interrupted constantly either, totally or partially through out [stet] the 30 minutes of the program." Falcomm Petition, Exhibit A.

against MediaOne of Southeast Michigan, Inc., pursuant to Section 76.975(b) of the Commission's rules, 47 C.F.R. § 76.975(b), **IS DENIED**.

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

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

²³ 47 C.F.R. § 0.321.