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

In the Matter of :	)	
	)	
Score Board International	)	
	)	CSR 5318-L
v.	)	
	)	
TCI of Central New Jersey, Inc.	)	
	)	
Leased Access Petition	)	

MEMORANDUM OPINION AND ORDER

Adopted: September 18, 2002 **Released: September 20, 2002**

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Score Board International ("Score Board") filed the above-captioned petition pursuant to Section 76.975(b) of the Commission's leased access rules against TCI of Central New Jersey, Inc. ("TCI"),[1] operator of a cable system serving Aspen, Colorado.[2] TCI filed an opposition to the petition to which Score Board replied.[3]

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 desire to distribute video programming free of editorial control by cable operators.[4] 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.[5] In *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, the Commission adopted new rules for leased access addressing maximum reasonable rates, reasonable terms

[1] The TCI system is now owned by ATT. To avoid confusion we will continue to refer to the cable operator as TCI.

[2] 47 C.F.R. § 76.975(b).

[3] The Bureau learned that Score Board never received the opposition filed by TCI. The Bureau forwarded a copy of TCI's opposition to Score Board to which Score Board filed its reply.

[4] Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984).

[5] Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). *See* 47 U.S.C. § 532(b).

and conditions of use, minority and educational programming, and procedures for resolution of disputes.[6] The Commission subsequently modified some of its leased access rules on reconsideration.[7]

III. DISCUSSION

3. The petition, in the form of a brief one-page letter, alleges that TCI refused to make commercial leased access channel capacity available to Score Board. Score Board states that it had an agreement with TCI and that TCI failed to broadcast Score Board's programming which was scheduled to begin airing daily for a period of two months on September 1, 1998.[8] Score Board's petition included a copy of an insurance certificate reflecting that liability insurance had been purchased and the effective date of such policy.[9]

4. In its opposition, TCI claims full compliance with its obligations under the Commission's leased access rules. TCI states it was under no obligation to begin airing Score Board's programming on September 1, 1998, because on that date there was no channel lease agreement between Score Board and TCI, or a liability insurance certificate acceptable to TCI.[10] TCI states that, although it subsequently entered into a channel lease agreement with Score Board, the agreement was not executed until September 28, 1998, and that the insurance certificate acceptable to TCI is dated September 23, 1998.[11] Accordingly, TCI asserts that it did not have an obligation to air Score Board's program beginning on September 1, 1998.[12] TCI states that it began airing Score Board's programming on a daily basis on September 10, 1998. In reply, Score Board states that, contrary to TCI's assertion, it had insurance when it submitted its channel lease application to TCI.[13] In addition, Score Board states that leased access service is now provided by TCI.[14]

5. Petitioner's complaint is based on the allegation that TCI failed to begin airing its programming on September 1, 1998. Although it is unclear whether Score Board demonstrated to TCI evidence of liability insurance by September 1, 1998, the record indicates that there was not a valid channel lease agreement between Score Board and TCI until September 28, 1998. TCI was not obligated to carry Score Board's programming until that date. We note that TCI nevertheless commenced carriage of Score Board's leased access programming on September 10, 1998. Consequently, we find no violation of our leased access rules.

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[6] 8 FCC Rcd 5631 (1993) ("*Rate Order*"); *see* 47 C.F.R. §§ 76.970, 76.971, 76.975 and 76.977.

[7] *Implementation of the Cable Television Consumer Protection and Competition Act of 1992,* 12 FCC Rcd 5267 (1997) ("*Second Report*"). *See also Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, 11 FCC Rcd 16933 (1996).

[8] Petition at 1.

[9] *See* Petition at Attachment 1 (Certificate of Liability Insurance).

[10] Opposition at 1.

[11] *Id.*

[12] Opposition at 2.

[13] Score Board Reply at 1.

[14] *Id.*

III. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that the petition for relief of Score Board International in File No. CSR 5318-L **IS DENIED**.

7. This action is taken by the Deputy Chief, Policy Division, Media Bureau, pursuant to authority delegated by Section 0.283 of the Commission's rules.[15]

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division, Media Bureau

[15] 47 C.F.R. § 0.283.