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

In the Matter of:	)	
	)	
A+ Video	)	
v.	)	CSR-5695-L
Time Warner Cable, Charlotte Division	)	
	)	
Petition for Reconsideration	)	

ORDER ON RECONSIDERATION

Adopted: June 3, 2005 **Released: June 6, 2005**

By the Deputy Chief, Media Bureau:

I. INTRODUCTION

1. Michael Coleman, Sr., d/b/a A+ Video ("Mr. Coleman") has filed a petition seeking reconsideration of the Media Bureau's decision denying the leased access complaint he filed against Time Warner Cable ("Time Warner").[1] Time Warner filed a response to the petition.

II. BACKGROUND

2. The *Bureau Order* denied Mr. Coleman's complaint against Time Warner, finding that Time Warner had not violated the Commission's leased access rules by demanding that Mr. Coleman pay technical support fees in connection with his presentation of commercial leased access programming on Time Warner's Charlotte, North Carolina cable system. Mr. Coleman alleged that Time Warner was not imposing similar technical charges for other programming carried on its Charlotte cable system and, therefore, the fees imposed on him were unreasonable. Time Warner argued that the disputed programming was, in fact, local origination programming. Time Warner stated that, because it was required by various franchise agreements to provide local origination programming, it selected, packaged and programmed the local origination programming itself rather than obtain it from a "non-leased access programmer." As a result, Time Warner maintained that it would make no sense to charge itself for technical assistance. The *Bureau Order* agreed and found that any technical services Time Warner provided itself when transmitting its own programming need not be provided free of charge to leased access users on its cable system.[2]

[1] *A+ Video v. Time Warner Cable, Charlotte Division,* 17 FCC Rcd 4215 (2002) (*"Bureau Order"*).

[2] *Bureau Order*, 17 FCC Rcd at 4217.

III. DISCUSSION

3. The commercial leased access requirements for cable operators were established by the Cable Communications Policy Act of 1984 ("1984 Cable Act"),[3] and amended by the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act").[4] Pursuant to this legislation, the Commission adopted rules for leased access addressing maximum reasonable rates, reasonable terms and conditions of use, minority and educational programming, and dispute resolution procedures.[5] In particular, Section 76.971(c) of those rules requires cable operators to provide leased access programmers with "the minimal level of technical support necessary for users to present their material" and further provides that they "may not unreasonably refuse to cooperate with a leased access user in order to prevent that user from obtaining channel capacity."[6] The rules also require that leased access programmers, like Mr. Coleman, reimburse cable operators for the reasonable cost of any technical support that they actually provide.[7] In determining when costs will be assessed, however, the Commission concluded that cable operators may not impose a separate charge for the same technical support that they already provide to non-leased access programmers.[8]

4. In his reconsideration, Mr. Coleman essentially reiterates the arguments set forth in his complaint. Mr. Coleman maintains that he should not be charged for any technical services that Time Warner provides to itself when it transmits its own programming.[9] In making such a claim, Mr. Coleman asserts that all programming carried on a cable system falls under the purview of the Commission's leased access rules.[10] Time Warner contends that Mr. Coleman has presented no evidence which warrants the reversal of our underlying *Order*.[11] It maintains that, because it is providing the disputed programming to itself, no purpose would be served by having to charge itself for any necessary technical services.[12] Consequently, Time Warner asserts that any technical services it provides to itself in this instance need not be provided to any leased access programmers on its cable system without compensation.[13]

5. The primary issue in this proceeding is whether Time Warner's provision of technical services to itself for the purpose of providing local origination programming precludes it from charging leased access users for the same services on its cable system. Based on information before us, we cannot

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[3]Pub. L. No. 98-549, 98 Stat. 2779 (1984), 47 U.S.C. § 521 *et seq.* (1984).

[4]Pub. L. No. 102-385, 106 Stat. 1460 (1992), 47 U.S.C. § 521 *et seq.* (1992).

[5]*Report and Order and Further Notice of Proposed Rule Making,* 8 FCC Rcd 5631 (1993) (*"First Report and Order"*). The Commission modified some of its leased access rules in the *Second Report and Order and Second Order on Reconsideration of the First Report and Order,* 12 FCC Rcd 5267 (1997) (*"Second Order"*). *See also Order on Reconsideration of the First Report and Order and Further Notice of Proposed Rulemaking,* 11 FCC Rcd 16933 (1996). The leased access regulations are codified at 47 C.F.R. §§ 76.970, 76.971, 76.975 and 76.977.

[6]47 C.F.R. § 76,.971(c).

[7]*Id.*

[8]*Id.*

[9]Reconsideration at 1.

[10]*Id.*

[11]Opposition at 1.

[12]*Id.*

[13]*Id.* at 3.

find that Time Warner, within the meaning of the rules, is providing any technical support to itself free of charge while assessing Mr. Coleman for the same type of services. There is no question that when Time Warner is providing itself with technical services it is in actuality paying for those services; it is merely a difference in accounting. Time Warner must pay its staff to perform the services at issue and incur the related overhead costs. No purpose would be served by requiring Time Warner to incur the added cost of breaking those charges out every time it places its own programming on its system. Moreover, in setting the rates for the technical services it charges leased access user on its system, Time Warner has, in essence, broken out the costs that it incurs. Under our rules, technical support charges must be derived from the cost that the cable operators incur in providing such services. In this instance, Mr. Coleman has not challenged Time Warner's costs for the services, but rather their imposition. We therefore find no purpose would be served by requiring Time Warner to charge itself separately for services it provides to itself every time it displays it own programming. For that reason, we deny Mr. Coleman's request for reconsideration.

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED,** that the petition for reconsideration filed by Michael Coleman, Sr., d/b/a A+ Video **IS DENIED.**

7. This action is taken pursuant to authority delegated by Section 0.283 and 1.106 of the Commission's rules.[14]

FEDERAL COMMUNICATIONS COMMISSION

Deborah Klein
Acting Chief, Media Bureau

[14] 47 C.F.R. §§ 0.283 and 1.106.