

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

In the Matter of
Roderick C. Harsh, United Productions
v.
Mediacom Communications Corporation
Petition For Commercial Leased Access
CSR 6336-L

ORDER

Adopted: January 26, 2007

Released: January 29, 2007

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Roderick C. Harsh ("Harsh"), on behalf of United Productions ("United"), filed the captioned petition alleging that Mediacom Communications Corporation ("Mediacom") failed to provide access and information requested on Mediacom's cable systems located in South Walton and Santa Rosa Counties, Florida. No response from Mediacom has been received. For the reasons stated below, we grant the petition.

II. DISCUSSION

2. In addition to requesting carriage on Mediacom's cable systems in South Walton and Santa Rosa Counties, United requested leased access information regarding Mediacom's requirements for insurance and technical support fees. United states that it received a confirmation signature card indicating that its request had been received by Mediacom. United asserts that a letter dated February 4, 2004 from Mediacom indicated that because United's letter took approximately two weeks to reach Mediacom it would be unable to comply with United's request for carriage by February 15, 2004. Mediacom therefore requested that the deadline be extended to February 17, 2004. United states that it

1 On January 20, 2004, by certified letter, United requested carriage on Mediacom's South Walton and Santa Rosa cable systems. On February 25, 2005, United filed this petition for special relief. Pursuant to Section 76.975(d) a petition must be filed within 60 days of the alleged violation. United is in compliance with this rule provision.

2 United states that a certified copy of its petition was served on the cable operator.

3 United Petition at 1.

4 Id.

5 Id.

6 Id.

agreed to the extension, but that when it subsequently attempted to substantiate access and obtain information, Mediacom did not return phone calls and has taken no further action regarding United's request.⁷ United asserts that Mediacom violated Section 76.970 of Commission's rules, which requires a cable system operator to provide prospective leased access programmers with leased access information within 15 calendar days of the date of the request and that Mediacom failed to grant United access to Mediacom's cable systems in South Walton and Santa Rosa Counties, Florida.⁸ As a result of Mediacom's actions, United asserts that the company is losing income necessary to support its operations.⁹

3. On March 4, 2004, United filed a supplement to its initial petition asserting that it received an application for leased access and other related paperwork, but that the information received was incomplete and failed to answer numerous specific questions that United posed in the initial correspondence with Mediacom.¹⁰ In addition, United states that Mediacom has required United to obtain "Media Perils Insurance" in the amount of \$1,000,000.¹¹ United contends that this requirement will prevent it from obtaining leased access because the insurance is cost prohibitive.¹²

4. Pursuant to Section 76.970(i)(1), cable operators are required to respond to prospective leased access programmers within 15 calendar days of the date on which a request for leased access information was made.¹³ On January 20, 2004, United sent Mediacom a request for leased access information. Pursuant to Section 76.970(i)(1), Mediacom would have had to respond to United's request on or before February 4, 2004. As set forth above, United indicates that although Mediacom was in contact by that date, Mediacom requested and received an extension of the time to respond to February 17, 2004. However, Mediacom failed to provide the information requested by February 17, 2004; failed to return United's phone calls for clarification and information; and failed to provide a response to United's leased access request. Although United received an application from Mediacom for leased access on March 4, 2004, the information received was untimely, incomplete, and failed to answer United's leased access related questions. We find, therefore, that Mediacom failed to provide leased access to United pursuant to Section 76.971. We also find that Mediacom has failed to comply with the provisions of Section 76.970(i)(1). We will order Mediacom to supply the information set out in this rule provision. We caution Mediacom that future violations of this nature may subject it to monetary forfeiture.

5. United previously has asserted that the high cost of insurance required by a cable operator prevented it from gaining access.¹⁴ The Commission held that requiring a leased access programmer to obtain reasonable liability insurance coverage does not constitute a violation of the leased access

⁷ *Id.*

⁸ *Id.*; see 47 C.F.R §§ 76.970 and 76.971.

⁹ *Id.* at 2.

¹⁰ United Supplemental Petition at 1.

¹¹ *Id.*

¹² *Id.*

¹³ See 47 C.F.R. § 76.970(i)(1).

¹⁴ See *Roderick C. Harsh, United Media Concepts, Petitioner v. TWC Cable Partners d/b/a Emerald Costs Cable Television*, 12 FCC Rcd 5985 (CSB 1997) ("United Media Concepts").

regulations.¹⁵ However, in *United Media Concepts*, the Commission concluded that the cost to United of obtaining insurance required by the cable operator was an obstacle to obtaining access.¹⁶ Similarly, in the instant case, United contends that the requirement to obtain \$1 million worth of insurance is extremely cost prohibitive and will prevent the company from obtaining leased access if insurance at that amount is required. The burden of establishing that the required insurance is reasonable is upon Mediacom.¹⁷ No evidence has been filed by Mediacom establishing the reasonableness of its insurance requirement, such as whether Mediacom requires non-leased access programmers to obtain insurance or carries insurance with respect to non-leased access programming, whether Mediacom has incurred litigation costs in this context, or the likelihood that the programming at issue will pose a liability risk. Consequently, we find that Mediacom's insurance requirement as applied to United is not in compliance with the leased access rules and should be eliminated or reduced to a reasonable amount consistent with the *Second Report and Order*.

III. ORDERING CLAUSE

6. Accordingly, **IT IS HEREBY ORDERED** that the petition for relief filed by Roderick C. Harsh, United Productions in File No. CSR 6336-L **IS HEREBY GRANTED** to the extent discussed herein.

7. **IT IS FURTHER ORDERED** that Mediacom shall within 15 days from the release date of this order provide United the requested leased access information, to the extent it has not already done so.

8. This action is taken pursuant to delegated authority under Section 0.283 of the Commission's rules.¹⁸

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁵ See *Anthony Giannotti v. Cablevision Systems Corporation*, 11 FCC Rcd 10441 (CSB 1996).

¹⁶ See *Roderick C. Harsh, United Media Concepts, Petitioner v. TWC Cable Partners d/b/a Emerald Costs Cable Television*, 12 FCC Rcd 5985, 5988 (CSB 1997).

¹⁷ See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Leased Commercial Access*, Second Report and Order and Second Order on Reconsideration of the First Report and Order, CS Docket No. 96-60, FCC 97-27, 12 FCC Rcd 5267 (1997) ("*Second Report and Order*") (the Commission concluded that insurance requirements must be reasonable in relation to the objective of the requirement. Cable operators will bear the burden of proof in establishing reasonableness and insurance requirements may be sufficient to insure adequate coverage. Determinations of what is a "reasonable" insurance requirement will be based on the operator's practices with respect to insurance requirements imposed on non-leased access programmers, the likelihood that the nature of 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).

¹⁸ 47 C.F.R. § 0.283.