

OMB Meeting
FCC Leased Access Rules

May 9, 2008

Cable Operates in a Highly Competitive Environment, But This FCC Nonetheless Has Been Very Regulatory in its Approach

- Today, cable television operates in an incredibly competitive environment; competing in every community in America against DirecTV and Dish Network; now facing competition from Verizon and AT&T as well; offering broadband to well over 90% of American homes; and bringing long-awaited competition in phone services.
- But the current FCC Chairman has dusted off regulations from back when cable was a monopoly and sought to make them more burdensome. The new leased access regulations are an egregious example.

Background on Commercial Leased Access

- Commercial “leased access” is a set of regulations that allows for-profit programmers to lease up to 15% of the channels of a cable system on a full- or part-time basis. Congress clearly told the FCC that leased access rates must not “adversely affect the operation, financial condition, or market development of the cable system,” and – until a few months ago – the FCC followed that law. Even though leased access rates have been set at very modest levels, most programmers have chosen not to lease time on cable systems.
- Those programmers using leased access have offered primarily infomercials and extremely low-budget programming, which typically fill only a single channel on most cable systems. Meanwhile, the statutory objective of programming diversity that led Congress to adopt leased access requirements decades ago has long since been fulfilled through private marketplace arrangements – and competition – without the need for government-mandated set-asides.

New Leased Access Rules Slash Rates that Can Be Charged to Commercial Leased Access Users And Impose Enormous, Unwarranted Paperwork Burdens

- The new leased access order was adopted over the dissents of two Commissioners, with even one of the Commissioners who voted in favor admitting that the new rules were made up out of whole cloth, without notice and comment. The effect of these new rules is to slash the amount that cable operators can charge leased access users to occupy a channel – to zero in many systems, and near-zero in most other systems.
- The new leased access rules also impose incredible paperwork burdens.

The FCC Has Ignored the PRA Requirements in its Submission to OMB

- The PRA and OMB regulations require the FCC to minimize paperwork burdens, to maximize the practical utility of the data, to avoid duplicative information collection requirements, to afford parties a reasonable time to produce required data, and to safeguard confidential information.
- The FCC has not taken “every reasonable step” to do these things.

The FCC Has Ignored the PRA Requirements in its Submission to OMB (cont'd)

- The FCC's submission to OMB ignored many of NCTA's and Comcast's points, failed to adequately address the legitimacy of others, and basically failed to show that the FCC had made *any* serious effort – much less taken all reasonable steps – to comply with the PRA and OMB requirements.

Our May 28th Filing Will Detail The Numerous Problems with the FCC's OMB Submission

- Cable operators will be forced to provide a vast array of newly-created information to potential leased access users within three business days of a request for information.
 - ❖ Eleven new categories of detailed information must be provided – including numerous sub-categories – representing a dramatic expansion of the information currently required.
 - ❖ The shortened, three business day turn-around means operators will be forced to devote significant resources to preparing materials even in advance of any request for leased access and must constantly update this information.
 - ❖ Comcast has estimated that in the first year it will take a minimum of 185 hours for each of its more than 600 cable systems to prepare and respond to requests.

Our May 28th Filing Will Detail The Numerous Problems with the FCC's OMB Submission (cont'd)

- Operators will be required to maintain for FCC inspection a wide variety of documentation to justify their rates.
- Every cable operator subject to leased access obligations will be forced to file a detailed annual report that contains a considerable amount of data the FCC already collects and does not use.
- The new rules will improperly require disclosure of confidential information, without any mechanism to maintain confidentiality.