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

In the Matter of:	)	
	)	
A+ Video	)	
	)	CSR 5695-L
v.	)	
	)	
Time Warner Cable, Charlotte Division	)	
	)	
For Leased Access	)	

MEMORANDUM OPINION AND ORDER

Adopted: February 27, 2002 **Released: March 5, 2002**

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Michael Coleman Sr., d/b/a A+ Video ("Mr. Coleman") filed a petition alleging that Time Warner Cable, Charlotte Division ("Time Warner") is in violation of the Commission's commercial leased access regulations by demanding payment of charges for technical support in connection with proposed commercial leased access programming for presentation on Time Warner's Charlotte, North Carolina cable system.[1] Time Warner filed a response to the petition, and A+ filed a reply.

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 editorial control of cable operators.[2] 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[3] revised the leased access requirements and directed the Commission to implement rules to govern this system of channel leasing. *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*"),[4] the Commission initially adopted

[1] *See* 47 C.F.R. § 76.9719(c).

[2] Pub. L. No. 98-549, 98 Stat. 2779 (1984).

[3] Pub. L. No. 102-385, 106 Stat. 1460 (1992). *See* Section 612(b) of the Communications Act of 1934, as amended, 47 U.S.C. §532(b).

[4] 8 FCC Rcd 5631 (1993).

rules for leased access addressing maximum reasonable rates, reasonable terms and conditions of use, minority and educational programming, and procedures for resolution of disputes.[5] 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 and Second Order on Reconsideration of the First Report and Order ("*Second Order*").[6]

III. DISCUSSION AND ANALYSIS

3. Mr. Coleman contends that Time Warner responded to his request for the airing of programming by quoting a schedule of rates that included technical support charges in addition to channel charges. Mr. Coleman asserts that the technical support charges violate the Commission's rules applicable to commercial leased access services adopted in the *Second Order*. Mr. Coleman argues that the rules adopted in the *Second Order* preclude Time Warner from imposing technical support charges in connection with the provision of leased access channels, because similar charges are not imposed by Time Warner for other programming carried on its Charlotte cable system. More particularly, Mr. Coleman alleges that Time Warner carries non-leased access programming, including Educational Showcase, Airforce News, Navy News, Army Newswatch, United Way, Healthy Connection, and Good Green Earth, on its cable system for which no technical service fees are imposed. Yet, Time Warner persists, despite extended negotiations, to demand day-time technical service fees of $24.90 per hour, night-time fees of $37.37 and all-day-Sunday fees of $49.81 for Mr. Coleman's leased access programming. Coleman contends that the imposition of these technical services fees represent invalid substantial and unreasonable increases in charges for carriage of leased access programming over the maximum reasonable fees allowed under the leased access regulations. Mr. Coleman requests that Time Warner be ordered to cease and desist from demanding the invalid technical service fees and from unlawfully discriminating against leased access programming.[7]

4. Time Warner defends its demands for technical service fees by describing the tasks necessary to be performed by its technical personnel with programming tapes received from a leased access programmer. Time Warner describes these tasks as including inspection of the tape and any accompanying instructions for titles, dates, and times of telecasting; preparing and transferring the taped programming for play on the operators playback system; programming the system for timely play; monitoring play; establishing a record of completed play for accounting and billing purposes; and returning the tape to the programmer. Time Warner claims it does not perform similar tasks with respect to any non-leased access programming.

5. Time Warner identifies two types of programming carried on the cable system's Channel 58 - leased access programming and local origination programming. Time Warner states that technical service fees identical to that quoted to Mr. Coleman are being charged for the other leased access programming carried on the channel.[8] Time Warner describes the other programming identified by Mr. Coleman as local origination programming that must be carried in compliance with conditions of its franchise agreements with various communities served by this cable system. While noting that such

[5] *See* 47 C.F.R. §76.970, 76.971, 76.975 and 76.977 (1995).

[6] 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).

[7] Petition at 1-3.

[8] Response at 3-5.

programming is often produced by third parties, Time Warner states that the programming is selected, packaged and programmed on the channel by itself to meet those franchise requirements. Time Warner contends that it is the programmer of this local origination programming, and argues that the programming is not obtained from a "non-leased access programmer" within the meaning of Section 76.971(c) of the rules. Time Warner asserts that it would make no sense to charge itself technical assistance fees for services it provides to itself as a programmer, and that any comparison with the requirement for technical assistance fees is irrelevant.[9]

6. In clarifying the matter of technical support required for leased access services, the Commission has stated that "[c]able operators may not impose a separate charge for the same kind of technical support that they already provide to non-leased access programmers because the maximum leased access rate represents what non-leased access programmers implicitly pay for carriage, including their technical costs. In other words, the maximum leased access rate already includes technical costs common to all programmers.…"[10] The question presented is whether the programming identified by Mr. Coleman as being carried by Time Warner on its program origination channel is non-leased access programming, within the meaning of Section 76.971(c) for determining whether technical services fees may be demanded of Mr. Coleman. We hold that it is not. Since that programming is local origination programming, the fact that Time Warner does not impose technical services fees with respect to such programming does not preclude Time Warner from imposing a reasonable technical service fee for carriage of commercial leased access programming for which technical services are performed. Section 76.971(c) precludes a cable operator from charging technical services fees for commercial leased access only where it does not impose such fee for non-leased access programming.

7. Accordingly, **IT IS HEREBY ORDERED** that the petition for relief filed in the captioned proceeding by Michael Coleman d/b/a A+ Video **IS DENIED**.

8. This action is taken under delegated authority pursuant to the provisions of Section 0.321 of the Commission's rules.[11]

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson, Deputy Chief
Cable Services Bureau

[9] *Id*. at 5-6. Time Warner defends the amount of theses fees as being based on hourly labor costs adjusted as necessary for overtime and Sunday tape play. *Id*. at 4-5. Mr. Coleman has presented nothing for the record showing that such fees are unreasonable.

[10] *Second Order*, 12 FCC Rcd at 5324-25.

[11] 47 C.F.R § 0.321.