

Cox, Las Vegas email chronological

(I've tried and tried to engage you in dialogue...just note the instances and yet you never seemed to even acknowledge much of what I have been forced to put in writing.)

Mar. 13 Dr. Jon...to me

Mr Stogner,

Attached is what Cox Cable had sent to me. I do not believe that they are in any way giving me the rates which I am entitled to obtain through the leased access legislation.

I would like to employ your skills to help me obtain the best possible situation here in Las Vegas and possibly in other markets as well. Please call me at your earliest convenience at [702-956-1611](tel:702-956-1611). I am available all day to speak. Thank you in advance Sir.

----- Forwarded message -----

From: **Leased Access Response**

Dr. Jon,

We are in receipt of your request for information for Leased Access in Nevada.

Attached is a copy of the Sample Leased Access Agreement and rate card for that market. Also attached is an Application for leased access service. Please complete and return the application to this email.

Thanks 3 Attachments: app/ rates/ sample agreement

Mar 23 to Leased, bcc: jon

Attached is a 'filled out' Cox leased access application from our files.

We would appreciate part time rates and the channel number this will be on for the Las Vegas system.
Attachment:

A. GENERAL INFORMATION

Applicant Name: StogMedia

Date: Mar. 13, 2017

Trade or Business Name: *(If different)* _____

Contact Person: Charles Stogner **Telephone:** 601-914-6672

Email Address: stogtv@gmail.com

Mailing Address: 5146 Beauregard Rd., Wesson, Ms. 39191

1. Status of applicant (check one)

☒ Sole Proprietor ☐ Limited Liability Company ☐ Corporation ☐ Partnership | *Limited:* ☐ Yes ☐ No

2. Principal business of applicant: television programming

B. PROPOSED USE OF CHANNEL

1. Only video programming will be accepted. On an attached sheet of paper, provide a general description of the proposed programming, including but not limited to, format, genre(s), theme or content, including whether the video programming will be a program length commercial. *(On the attached Exhibit B-1)*

2. Do you anticipate that any of the video programming will be aired live? ☐ Yes ☐ No **Indeterminate at this time. Will determine once we have information on ways Cox, Las Vegas receives signals from non-leased programmers**

3. Is any of the proposed programming indecent or obscene? ☐ Yes ☒ No

4. Will there be any commercial use of the channel, i.e., sale of advertising, fund raising, etc.? ☐ Yes ☒ No

If so, please describe generally: Same as generally in local and network broadcast network programming, primarily local, competes with Cox Media ad inserts.

5. What are the proposed commencement and termination dates for cable channel use? Cannot be determined until we have reviewed rates and areas of coverage, assuming the same coverage as channels with local 'ad inserts'.

6. Do you desire: ☐ full or ☒ part-time use of a channel But may expand to full time

7. What days each week do you intend to air your programming? ☐ Mon ☐ Tues ☐ Wed ☐ Thurs ☐ Fri ☐ Sat ☐ Sun Cannot be determined until we have reviewed rates and areas of coverage, assuming the same coverage as channels with local 'ad inserts'.

8. On a weekly basis, do you wish to air programming on ☐ differing days or ☐ recurring days?
Please explain: Cannot be determined until we have reviewed rates and areas of coverage, assuming the same coverage as channels with local 'ad inserts'.

9. For what time periods each day do you wish to air programming? If the time periods differ by day of the week, detail separately for each day (For example, Mon 8pm – 10pm, Wed 2pm – 4pm, and Fri 10am – 12pm.)

Cannot be determined until we have reviewed rates and areas of coverage, assuming the same coverage as channels with local 'ad inserts'

10. List and provide all copyrights, permits, licenses, and clearances necessary for the proposed service and identify those already obtained. (Attach separate sheet if necessary.)

We fail to find anywhere in the law and/or FCC regulations, rules, orders or directives where we're required to provide this information to a cable operator, who is 'held harmless' from our content but the law. If Cox has evidence where FCC has agreed you have a right to this information

11. List any prior Cox systems with which Applicant has sought or obtained leased commercial access. (Include dates.)

Don't recall dates but there have been a few times over the past 15 years that requested leased access rates/info from various sites. None ever worked out at the time.

12. Describe any previous experience in cable television operation and/or signal transmission services.

Been actively engaged in cable programming and operations since 1996.

13. List any other channel license or lease agreements to which applicant was or is currently a party or is currently negotiating.

Include in the list the name, address, telephone number and email address of an individual who can verify this information.

I fail to find anywhere in the law, FCC regulations, rules, orders or published directives that says a cable operator has a right to this proprietary information. StogMedia leases airtime on a large number of cable sites, nationwide but this is not information FCC rules require we provide. Actually this varies from month to month. StogMedia leases airtime on a large number of cable sites, nationwide but this is not information FCC rules require we provide. Actually this varies from month to month.

C. LEGAL QUALIFICATIONS

If applicant is a corporation, partnership, limited liability company or other business entity, attach evidence of authority to do business in the state in which the cable system is located.

☐ Attached as Exhibit C ☒ Not attached because **Fail to find anywhere this is required of airing on leased access. What about 'infomercials' Cox, Las Vegas, may air on a channel? Do they have to meet this requirement or can you provide me evidence of where you find justification for this?**

D. FINANCIAL QUALIFICATIONS

1. Attach a current, certified balance sheet and profit and loss statement including applicant's last fiscal year or other evidence satisfactory to demonstrate applicant's ability to meet the financial obligations in connection with the licensing of a channel.

If applicant is a publicly held company, attach copies of its latest annual report and 10-k filing with the SEC.

☐ Attached as Exhibit D-1 ☒ Not attached because **We are not seeking any 'extension of credit' and prepay all airtime by the month.**

2. List all sources of financing for applicant's proposed cable channel operations.

Our shows are self-funded.

3. Has applicant, or any partnership, company or concern with which applicant is affiliated, whether by direct or indirect ownership or parent or subsidiary relationship, ever been a debtor or bankrupt in a proceeding under the bankruptcy act, placed in receivership, or become insolvent? ☐ Yes ☒ No

If yes, please provide details: _____

4. List, where applicable, the following (attached as Exhibit D-4): *(Include names and addresses.)*

- Corporation – all stockholders owning five percent (%5) or more of corporation voting stock, and all officers and directors.
- Partnership – all general partners.
- Limited liability company – all officers and members.
- For all of the above, provide the name and address of at least three credit references, one of which must be applicant's principal bank.

Please be advised we prepay all leased access airtime, as prescribed by the cable operator leased access agreements. You are instructed to make NO inquiry into our credit that will cause it to be recorded.

E. TECHNICAL QUALIFICATIONS

1. How will the video programming be delivered to the cable system for distribution?

☐ Tape ☐ DVD ☐ Broadband ☐ IP Over Broadband ☐ Microwave ☐ Satellite **Dependent on how the headend receives programming (content/signals) from other programmers, especially non-leased programmers.**

2. If microwave is to be used in the proposed operations, attach a complete description of such microwave proposal, including expected costs, location of sites, and other details.

3. Does applicant anticipate the need for any technical assistance from Cox in order to deliver its video programming? **None other than what FCC says regarding same type technical assistance.**

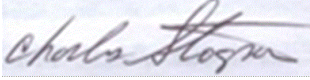
If yes, list assistance requested: _____

By signing this application, I hereby certify that I am an authorized representative of StogMedia and have full power to submit this Application and to disclose the information contained herein and to consent to

an investigative report, including information concerning character, general reputation and credit worthiness. **Please note previous mention of not effecting our credit.**

Charles Stogner

Printed Signed



Title

Exhibit B

B1

Provide a general description of the proposed programming, including but not limited to, format, genre(s), theme or content.

Categories/types of Programming 76.970, 47 CFR Ch. 1 (10-1-94 edition)

Item (f)...there are three program categories.

Programming for which a per-event or per channel charge is made;

Programming more than fifty percent of the capacity of which is used to sell products directly to consumers; and

All other programming.

Programming falls in the FCC category of 'other' refer to FCC

Will the video programming be a program length commercial? ☐ Yes ☐ No PERHAPS,
possible there may be from time to time shows that would be considered 'infomercials', same as those
carried on many cable networks and/or perhaps by Cox on a local origination channel.

Exhibit C

Attach evidence of authority to do business in the state(s) in which the cable system(s) is located.

Fail to find anywhere this is required of airing on leased access. What about 'infomercials' Cox, Las Vegas, may air on a channel? Do they have to meet this requirement or can you provide me evidence of where you find justification for this?

Exhibit D

D1

Attach a current, certified balance sheet and profit and loss statement including applicant's last fiscal year or other evidence satisfactory to demonstrate applicant's ability to meet the financial obligations in connection with the licensing of a channel. If applicant is a publicly held company, attach copies of its latest annual report and 10-k filing with the SEC.

Not applicable in that we ARE NOT applying for any extension of credit but will prepay.

Exhibit D

D4

Not Applicable

☐ Corporation – all stockholders owning five percent (5%) or more of corporation voting stock, and all officers and directors.

☐ Partnership – all general partners.

☐ Limited liability company – all officers and members.

Name Title (If officer) Address

Provide the name and address of at least three credit references, one of which must be applicant's principal bank.

Name of Bank Contact Address Phone

Not applicable in that we ARE NOT applyinng for any extension of credit but will prepay.
Please list at least two more references below.

Name Address Phone

Not applicable in that we ARE NOT applyinng for any extension of credit but will prepay.

Charlie Stogner <stogtv@gmail.com>

Mar 13

to Leased, bcc: jon

Attached is a 'filled out' Cox leased access application from our files.

We would appreciate part time rates and the channel number this will be on for the Las Vegas system.

ATTACHMNET 1

Leased Access

Mar 23

Response <LeasedAccessResponse@cox.com>

to me

Mr. Stogner,

Per your request, below is the information for part time rates and channel number in the Las Vegas system.

Channel: 189

Time Period	Cox TV Starter	Expanded Basic	A La Carte Channel
6:00 AM - 9:00 AM	\$343.95	\$287.92	\$1,263.48
9:00 AM - 4:00 PM	\$129.34	\$108.27	\$475.12
4:00 PM - 8:00 PM	\$297.90	\$249.37	\$1,094.34
8:00 PM - 11:00 PM	\$623.54	\$521.97	\$2,290.57
11:00 PM - 1:00 AM	\$519.25	\$434.66	\$1,907.45
1:00 AM - 6:00 AM	\$123.82	\$103.65	\$454.85

Mar 23

Charlie Stogner <stogtv@gmail.com>
to Leased

The rates provided StogMedia on Mar. 23, 2017 appear to be high so I'm asking does this include all the franchised areas in the area.

Unless there's a really high number of subscribers that receive the tier with leased access, these figures seem expensive based on what we see as rates in other areas, some with much larger populations than Las Vegas.

Does Cox offer any 'long form' advertising on any 'local origination' channel,

Does Cox not offer 'zones' for targeting ad inserts and/or long form on local channel? **(NOTE: Cox never answered the question re 'long form' on 'local origination, See attachment where we shared comparison between the two.)**

Leased Access
Response <LeasedAccessResponse@cox.com>
to me

Mar 28

Mr. Stogner,

Thank you for providing the Leased Access Application from your files as well as the additional inquiries you provided upon receiving Cox's hourly lease rates for part-time leased access on our Las Vegas, Nevada cable system.

Section 76.970(i)(3) of the FCC's rules provides that bona fide requests for leased access information must include: the desired contract term length; the time slot desired; the anticipated commencement date for carriage; and the nature of the programming. Once this information is submitted, but not before, cable operators like Cox must provide the information listed in Section 76.970(i)(1).

Cox's Leased Access Application requests the information required by Section 76.970(i)(3) as well as information required for Cox to make an initial determination regarding, e.g., appropriate security deposits, insurance requirements, and technical support that may be required to carry the leased access programming. In addition to the specific requirements of Section 76.970(i)(3), the FCC has long held that this information includes, among other things, "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." Leased Commercial Access, Second Report And Order And Second Order On Reconsideration Of The First Report And Order, 12 FCC Rcd 5267, 5323 at para. 112 (1997); see also *Gianotti v. Cablevision*, 11 FCC Rcd 10441 (Cab. Serv. Bur. 1996). You also may recall that information regarding how the leased access programming will be delivered is relevant to the technical support that may be needed to distribute the programming and the cost

of that support. See *StogMedia d/b/a Stog TV v. CableOne, Inc.*, 24 FCC Rcd 2947 (Med. Bur. 2009).

The StogMedia Leased Access Application fails to provide the information required by Section 76.907(i)(3) or any of the other information Cox will need to make a determination regarding carriage of StogMedia's programming. For example, StogMedia failed to provide such information in response to Sections B1, B5, B7, B8, B9, B10, B13, C, E1, E3, Exhibit B1, and Exhibit C of the Application. The StogMedia Leased Access Application you provided to Cox on or about March 13, 2017 therefore is not a bona fide request for leased access information and does not obligate Cox to provide the information listed in Section 76.970(i)(1) of the FCC's rules.

Nevertheless, as you know, Cox previously provided StogMedia with a leased access rate card for the Las Vegas, Nevada cable system serving Las Vegas, N. Las Vegas, Henderson, Boulder City, and Clark County. See *King Kong Broadcasting v. Cox Communications Las Vegas, Inc. d/b/a Cox*, 28 FCC Rcd 15618 (Med. Bur. 2013). Regarding your inquiries on March 23 regarding Cox's Las Vegas system local origination channel, those inquiries are irrelevant to leased access, and nothing in the FCC's rules requires Cox to respond to them.

Thank you for your interest in commercial leased access on Cox's Las Vegas cable system. If you would like to discuss carriage further, please provide the information requested in Cox's Leased Access Application.

Charlie Stogner <stogtv@gmail.com>

Mar 29

to Leased

Although you wrote; "Nevertheless, as you know, Cox previously provided StogMedia with a leased access rate card for the Las Vegas, Nevada cable system serving Las Vegas, N. Las Vegas, Henderson, Boulder City, and Clark County". , I find the 'tenor' of your correspondence has it appear you're not exactly eager to live up to the 'spirit' of the law; to provide that 'genuine outlet' prescribed by Congress when enacting the law.

You may want to first consider the absurdity of the 'bona fide' rule at Section 76.970(i)(3). It appears this applies to 'small system' operators which I doubt Cox qualifies as. However let's see if this will satisfy. The provisions of the small system 'bona fide' call for the applicant to determine such things as time slot, etc. without first having the knowledge necessary to make such a determination.

StogMedia has been exercising the right to leased access with cable sites since 1997 and has always made it a practice to establish one year agreements, provide the requisite insurance to then enable us to secure carriage for whatever times desired (time slot available of course) anytime during the year. But in this case, let's technically satisfy the 'bona fide' request by noting we want the agreement (not contract) for one year. We're not yet ready to begin use of a channel since we first needed rates and other info to determine what fit our needs. However, to satisfy the 'bona fide' request at (i)(3). Time Slot: We will begin with requesting 1:00 to 1:30am, Wednesdays.

Anticipated date to commence: June 21, 2017

Nature of Programming: **47 U.S.C. § 612 (b) (5) Video programming is defined as**

“programming provided by, or generally considered comparable to programming provided by, a television broadcast station.” 47 U.S.C. § 602).

Or, this with our category being “3”; “All other Programming

Categories/types of Programming :

Per 76.970, 47 CFR Ch. 1 (10-1-94 edition Item (f)

there are three program categories.

1. Programming for which a per-event or per channel charge is made.

2. Programming more than fifty percent of the capacity of which is used to sell products directly to consumers; and

3. All other programming.

Now let’s address some more points in your correspondence.

Obviously with years of experience with airtime (carriage on Comcast, Time Warner, Charter, Bright House, Mediacom and many more, literally coast to coast, border to border, we do and have met what you cite. Since StogMedia is a nationwide user of leased access programming, the only known multi-site national operator, and I also have served as president of the national association of leased access programmers since 2003, I’m well aware of FCC’s position on permitting cable operators to require proof of ‘media perils’ coverage and the issue of technical support you cite, StogMedia d/b/a Stog TV v. CableOne, Inc., 24 FCC Rcd 2947 (Med. Bur. 2009) is a sad joke. One thing, FCC addressed ‘delivery’ of signals when in our petition we made no mention of having the cable operator ‘deliver’ our signal. The issue was ‘receiving’ signals.

In their order (it took them about a year to rule on this) FCC stated: **Cable One further states that there are no other programmers on the Biloxi or Long Beach systems that use the Internet to transport their programming to these headends, and StogMedia concedes as much. StogMedia did not concede** since in fact we never knew Cable One was claiming we were the only users. The order continues: **Because Cable One does not provide free broadband capacity to any leased access or non-leased access programmer for the delivery of video programming to its headends, it is entitled to charge StogMedia for the reasonable costs of such services, as permitted by Section 76.971(c) of our rules.**

Cable One concealed the fact they were indeed using broadband to deliver programming content to their own local community channel (see: http://www.keywesttechnology.com/wp-content/uploads/2016/03/Case-Study_Cable-ONE.pdf) In this article a Cable One employee is quoted as saying, **“Through the MediaXtreme editor, I schedule ads, set them up and send them to the three headends.”** It seems pretty obvious Cable One lied to FCC in their answer to our petition and FCC took their word. What she described is the same as what StogMedia does. So, let’s move on to where you write: StogMedia failed to provide such information in response to Sections B1, B5, B7, B8, B9, B10, B13, C, E1, E3, Exhibit B1, and Exhibit C of the Application.

B1: Please see the programming description mentioned earlier

B5: Note our comment on the application. Then refer to where earlier in this correspondence we wrote:). Time Slot: We will begin with requesting 1:00 to 1:30am, Wednesday

Anticipated date to commence: June 21, 2017

B7: See above.

B8: For purposes of providing a reply, ‘differing days’

B9: Answered in B5, Wednesday

B10: If you will refer to the submitted application you will see this was answered. However, does this not cross the line of Cox trying to impose 'conditions and/or terms' on leased access?

B13: Again refer to the submitted application. If Cox has evidence FCC permits them asking this line of questioning, please provide evidence of it.

C; Again, if you feel your permitted to require this information, please provide evidence.

E1: This was answered. You have not provided us information on how you receive content from other programmers.

E3: Again, check the submitted application and I believe you will find this was answered.

Exhibit B1 of the submitted application does provide this info.

Exhibit C: Again, refer to our comments on the submitted application.

Interesting you mention King Kong where in the petition Cox cites "Roberts vs Time Warner". But you left off where FCC wrote: The FCC states that cable operators may be required to accommodate area-specific leased access if the following conditions appear:

1. The necessary technology is in place and is operational throughout the entire cable system.
 2. There are no significant technological or economic barriers.
 3. Leased access opportunities could be lost through clustering or consolidation of local systems.
- It has been pointed out By Time Warner's own admission on their website, the technology exists, is operational, and apparently profitable

You write that inquiries regarding any local origination channel (ch. 48?) are irrelevant to leased access but I must differ. Local ad insert and bulk airtime (long form) sales by cable operators are the most severe competition to local leased access for local advertising dollars. Cable operator's media sales offer them extreme 'market power' over leased access programmers, something that Congress admonished FCC to not permit.

The rates Cox provided will suffice for us to determine the feasibility of us using leased access airtime at Las Vegas. However in that Cox Communications grew out of Cox newspapers, it is dismaying corporate officers don't approach their cable communities with the same zeal and community minded spirit as I'm sure was that of 28 year old James M. Cox when he founded Cox Enterprises by buying the Dayton (Oh.) Evening News.

Having spent over 55 years as a journalist, spanning from cub reporter to editor/publisher of several weekly papers, combined with ownership and management experience in other businesses I feel I would be remiss should I not at least make an effort to have a cable operator, birthed from a newspaper background, take a serious look at changing the way they treat leased access and instead of going to extremes to discourage or make it difficult to secure carriage on their systems, adopt an attitude of embracing local programming and cooperating in having it truly the 'genuine outlet' desired by Congress. A major cable operator once described local programming as 'customer retention, line extension'.

If my information is still insufficient to satisfy your demands for executing a formal leased access agreement for us at Las Vegas, please respond with whatever additional demands or conditions you want to impose.

Respectfully,
Charles Stogner,
StogMedia

Response <LeasedAccessResponse@cox.com>

to me

Mr. Stogner,

Thank you for your March 29 e-mail message regarding commercial leased access on Cox's cable system serving the Las Vegas, Nevada market area. Cox will be happy to move forward as soon as StogMedia provides Cox with a completed Leased Access Application containing all the information requested in the Application, as discussed in our previous correspondence. StogMedia has yet to provide all the required information. For your convenience, therefore, attached is a Leased Access Application for carriage on the Cox Las Vegas cable system.

Despite the deficiencies in the StogMedia's initial Leased Access Application and your March 29 message, however, attached is the information referenced in Section 76.970(i)(1) of the FCC's rules, including available leased access set-aside capacity in the Las Vegas system, a complete schedule of full-time and part-time leased access rates, and rates associated with technical and studio costs. For the Las Vegas market, Studio costs are \$100 per hour; Technical fees are \$125 per man hour. These fees are subject to change. Currently, 100% of our leased access capacity is available. In an email sent on March 23rd, we mistakenly listed our leased access channel as 189. It is actually channel 48.

Your message states that Section 76.970(i)(3) of the FCC's rules, which sets forth the required contents of a bona fide leased access request, is an "absurdity" that "appears . . . [to apply only] to 'small system' operators." StogMedia's characterization of the rule notwithstanding, Cox believes your statement that the rule applies exclusively to small system operators is incorrect. First, subsections 76.970(i)(2), which allows small systems an additional fifteen (15) days to respond to leased access requests, and 76.970(i)(3), which specifies the contents of such requests, "as used in this section [i.e., 76.970]," are independent subsections of 76.970. Second, the FCC's precedents clarify that the rule applies regardless of system size. See, e.g., *Stephen S. Smith v. TCI Cablevision of Texas, Inc.*, 13 FCC Rcd 3121, 3124 at para. 8 (Cab. Serv. Bur. 1998) (applying the rule to then largest cable television operator in the country, and stating that the rule "sets forth in detail four information requirements that a bona fide written leased access request must contain") (footnote omitted); see also *Chauncey v. Continental Cablevision*, 11 FCC Rcd 1029, 1034 at para. 11 (Cab. Serv. Bur. 1995). In any event, this is a moot point because Cox has provided the information referenced in Section 76.970(i)(1) of the FCC's rules.

Section B1 and Exhibit B of Cox's Leased Access Application request "a general description of the proposed programming, including but not limited to format, genre(s), theme or content, including whether the video programming will be a program length commercial." Neither StogMedia's Leased Access Application, which refers to outdated 1994 FCC rules regarding leased access rate categories, nor your March 29 message, which refers to the statutory definition of video programming, responds to this legitimate request. As our previous correspondence demonstrated, the FCC has long held that cable operators have the right to such information regarding the content of proposed leased access programming for the purpose of ascertaining, among other things, "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.” Leased Commercial Access, Second Report And Order And Second Order On Reconsideration Of The First Report And Order, 12 FCC Rcd 5267, 5323 at para. 112 (1997) (emphasis added) (“Second Leased Access Report”). The FCC, moreover, typically considers this “nature of the programming” factor in leased access cases. See, e.g., Church of New Bedford v. MediaOne, 14 FCC Rcd 2863 (Cab. Serv. Bur. 1999) (religious programming); Campbell v. Time Warner Cable 13 FCC Rcd 16702 (Cab. Serv. Bur. 1998) (unrehearsed and ad hoc nature of programming). Therefore, please ensure your revised Leased Access Application provides a meaningful and accurate description of the “nature of the programming” that StogMedia intends to present, as required by Section 76.970(i)(3)(iv) of the FCC’s rules.

Please provide factual responses in your revised Leased Access Application. Contrary to the claims in your March 29 message, StogMedia has failed to provide the information requested regarding copyrights, permits, licenses, and clearances (Section B10); channel license or lease agreements or negotiations (Section B13); legal qualifications to do business in the state of Nevada (Section C and Exhibit C); method of video programming delivery (Section E1); and technical assistance (Section E3). As demonstrated in our previous correspondence and the FCC’s Second Leased Access Report — which specifically authorizes Cox to seek information regarding and to investigate “previous instances of litigation arising from the leased access programming, and any other relevant factors” impacting the proposed carriage of the leased access programming, 12 FCC Rcd at 5323 — all the information Cox requested is necessary to make an initial determination concerning, e.g., appropriate security deposits, insurance requirements, and technical support. See also StogMedia d/b/a Stog TV v. CableOne, Inc., 24 FCC Rcd 2947 (Med. Bur. 2009) (method of delivery and technical assistance).

Your March 29 message disagrees with Cox that inquiries regarding Cox’s local origination channel, which is wholly within Cox’s editorial control, are irrelevant to requests for leased access, over which Cox exercises no editorial control. We are not aware of any provision of any law, rule, or regulation that requires Cox to disclose such information to leased access applicants.

Thank you for your continued interest in commercial leased access on Cox’s Las Vegas area cable system. To move forward, please complete the attached Leased Access Application.

Charlie Stogner <stogtv@gmail.com>

May 19

to jennifer.hight.

Ms.Hightower, I'm president of the national association of leased access programmers and need to discuss how Cox apparently interprets and requires conditions in their leased access application.

I've been in media over 60 years, ranging from cub-reporter to newspaper publisher, as well as involvement in the cable industry as a programmer and association officer.

Cox seems to be writing their own rules and I believe a discussion could avoid the publicity a formal petition to FCC would create.

Can you please provide me a number and time convenient to call you?

Charlie Stogner <stogtv@gmail.com>

May 19

to Leased

In response to your March 28 message re our application for Las Vegas, let's see if this amended application now meets your criteria.

ATTACHMENT 2

Philpott, Joiava (CCI-Atlanta-LD) <Joiava.Philpott@cox.com>

May 23

to me

Dear Mr. Stogner,

I am responding on behalf of Jennifer Hightower regarding the email that you sent to her last Friday. I shared with Jennifer that before I joined Cox Communications, I use to oversee leased access work at Charter Communications many years ago and that I was familiar with you and the significant work that you do in the leased access space. I am presently working with the team here at Cox to better understand what has transpired with you and I will follow up with you within the next couple of days.

Thank you,

Joiava Philpott
VP, Regulatory Affairs
Law & Policy Department
Cox Communications, Inc.
6205-B Peachtree Dunwoody Rd.
Atlanta, GA 30328
404-269-0983 tel
404 269-0539 fax
Joiava.philpott@cox.com

Charlie Stogner <stogtv@gmail.com>

May 23

to Joiava

I appreciate hearing from you and look forward to a discussion where we can review leased access rules and how Cox interprets their handling it.

Meanwhile, I need the person, whoever it is that handles leased access requests at LeasedAccessResponse@cox.com to please consider the latest application StogMedia submitted last Friday for an agreement at Las Vegas. I was able to reach a decision on the time slot over the weekend and emailed this to that same email address yesterday.

I realize there may be questions on some of the 'conditions' Cox feels entitled to impose on leased access that may not be answered in exactly the wording this person has in mind, one being whether or not StogMedia is licensed to do business in Nevada. I don't think acting in a manner as a customer paying for airtime (like buying an ad insert) will require us having a Nevada business license. If so it will help if someone with provide evidence of that so we can act on it.

Basically I've responded to Cox' application in the same manner as I do all other cable systems so I hope we can move ahead and expedite this so we can begin using a channel by June 15.

Again, I appreciate hearing from you and am glad to know someone with your experience is involved.

Thanks

Charlie Stogner

Charlie Stogner <stogtv@gmail.com>

May 24

to Joiava

Can we take a couple actions that should help us a discussion over where we may see differences in the law?

I've resubmitted an application last Friday and would think that by today this could have been viewed and either accepted and/or rejected based on Cox' application. We would like to being airing June 15 and now each day is crucial.

If there are areas you feel you're entitled to having us answer on your form, please point them out. If perhaps it has to do with the business license question in Nevada, will you please have someone provide evidence or where entities buying 'ad inserts' and/or placing 'long form' content in any 'local origination' or community channel must do so.

Thanks for the quick response,

Charlie Stogner <stogtv@gmail.com>

May 22

to Leased

We submitted an application for leased access at Las Vega Friday and have since been able to determine the airtime schedule we wish to have.

We seek 1-2am, seven (7) days a week on our one-year leased access agreement.

Please acknowledge receipt of this request.

On another note, as national president of the Leased Access Programmers Assn. and owner/operator of the only known nation-wide network of local cable sites airing leased access I would appreciate Government Affairs being professional enough to provide me with the name of a corporate officer handling leased access.

Comcast, Charter, Mediacom, Cable One are among those cable systems that do provide some senior officer to communicate with regarding leased access on their systems.

Leased Access

Jun 2

Response <LeasedAccessResponse@cox.com>
to me

Dear Mr. Stogner:

Thank you for your recent messages (dated May 22, May 23, May 24, and May 25, 2017) to Ms. Jennifer Hightower, Cox's Senior Vice President of Law and Policy, Ms. Joiava Philpott, Cox's Vice President of Regulatory Affairs, and Mr. Derrick Hanson, Cox's Director of Regulatory Affairs.

Based on your correspondence, Cox believes StogMedia may misunderstand the purpose of certain information Cox requests in its Leased Access Application. Cox therefore reiterates that the information requested in its Leased Access Application that StogMedia has refused to provide — including information regarding the nature of the programming, copyright *etc.* licenses, existing channel lease agreements, financial qualifications, method of programming delivery, *etc.* — is solicited for one and only one reason. Namely, to ascertain the liability and litigation risk to which Cox will be exposed by carriage of leased access programming over which Cox has no editorial control by law. The level of risk in turn determines the scope and extent of reasonable contractual protections that will be necessary to mitigate those risks, such as, *e.g.*, insurance, security deposits, and surety bonds. As an individual with extensive experience in the entertainment industry, you surely are aware that both leased access and non-leased access video programmers routinely provide such information to cable operators and other video programming distributors in one form or another under nearly all program carriage agreements.

Cox appreciates that after almost three months and multiple Cox requests, StogMedia has finally now provided Cox with three of the four items required for *bona fide* leased access requests under Section 76.970(i)(3) of the FCC's rules. *See* 47 C.F.R. § 76.970(i)(3). StogMedia, however, continues to withhold information regarding "[t]he nature of the programming" it wishes Cox to carry on its Las Vegas, Nevada area cable television system, which is specifically required by Section 76.970(i)(3)(iv) of the rules. 47 C.F.R. § 76.970(i)(3)(iv); *see also* *Stephen S. Smith v. TCI Cablevision of Texas, Inc.*, 13 FCC Rcd 3121, 3124 at para. 8 (Cab. Serv. Bur. 1998) (stating that the rule "sets forth in detail four information requirements that a bona fide written leased access request must contain") (footnote omitted); *see also* *Chauncey v. Continental Cablevision*, 11 FCC Rcd 1029, 1034 at para. 11 (Cab. Serv. Bur. 1995).

As you requested, Cox specifically acknowledges receipt of your May 22 message seeking a one-year leased access agreement for daily carriage of unspecified StogMedia programming during the one-hour period from 1:00 a.m. to 2:00 a.m. We also acknowledge receipt of StogMedia's revised, but still incomplete, leased access application, dated May 19, 2017, and StogMedia's stated desire to commence carriage on June 15, 2017. As you know, despite having yet to receive a *bona fide* leased access request from StogMedia, Cox previously

provided StogMedia with all the information specified in Section 76.970(i)(1) of the FCC's rules. *See* 47 C.F.R. § 76.970(i)(1). That information included the available leased access set-aside capacity in Cox's Las Vegas system, a complete schedule of full-time and part-time leased access rates, a schedule of rates associated with technical and studio costs, and — although StogMedia did not request it and Cox was under no obligation to provide it — a sample leased access contract.

StogMedia's revised leased access application, dated May 19, again fails to provide all the information required by Section 76.907(i)(3) or any of the other information Cox will need to ascertain the risks of carrying StogMedia's programming, as discussed in detail below and in Cox's previous correspondence. Nevertheless, in the interest of moving forward with StogMedia's request and using the information StogMedia has provided to date, Cox plans to begin preparing a specific Leased Access Agreement between StogMedia and Cox Communications Las Vegas, Inc. d/b/a Cox.

Based on Cox's current leased access rate card for the Las Vegas system and StogMedia's apparent desire for daily carriage from 1:00 a.m. to 2:00 a.m. on Cox's TV Starter package (Channel 48), the annual leased access fee will be \$45,194.30 (*i.e.*, \$3,766.19 monthly). Annual rates for other time periods are easily determined by reference to the rate card Cox previously provided to StogMedia. The leased access fee is in addition to any insurance requirements, security deposits, surety bonds, technical, transport fees, or other requirements that may be necessary to protect Cox. Cox cannot now determine the precise scope and extent of those additional requirements and fees because StogMedia continues to refuse to provide any information that would enable Cox to assess the liability risks posed by carriage of StogMedia's proposed programming (whatever it is).

For example, StogMedia to date has refused Cox's legitimate and reasonable requests to provide:

1. a description of the nature of the programming StogMedia proposes to transmit on Cox's cable system;
2. evidence that StogMedia has obtained the copyrights, permits, licenses, and clearances necessary to publicly perform its programming, including copyrighted works, such as music, incorporated in its programming;
3. information regarding other channel license or lease agreements to which StogMedia is or may be a party;
4. evidence of StogMedia's authority to do business in the state of Nevada;
5. evidence of StogMedia's financial qualifications; or
6. an indication of how StogMedia will deliver its video programming to the cable system or whether and what technical assistance it may require.

In response to the inquiry in your May 24 message to Ms. Philpott, and as Cox has now repeatedly explained to StogMedia, this information is necessary for Cox to evaluate the risks of carriage and to determine reasonable insurance, security and other contractual protections, as well as technical fees. Without such information, the potential risks to Cox increase exponentially and, in Cox's view, to unacceptable levels. Cox also previously has explained in

detail to StogMedia the FCC's rules, orders, and adjudicatory decisions that support Cox's request for this information.

To briefly reiterate, however, the FCC has long held that in addition to the specific requirements of Section 76.970(i)(3), which StogMedia has yet to satisfy, cable operators have the right to ascertain, among other things, "*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.***" Leased Commercial Access, *Second Report And Order And Second Order On Reconsideration Of The First Report And Order*, 12 FCC Rcd 5267, 5323 at para. 112 (1997) (emphasis added); *see also Gianotti v. Cablevision*, 11 FCC Rcd 10441 (Cab. Serv. Bur. 1996). The FCC, moreover, typically considers this "nature of the programming" factor in leased access cases. *See, e.g., Church of New Bedford v. MediaOne*, 14 FCC Rcd 2863 (Cab. Serv. Bur. 1999) (religious programming); *Campbell v. Time Warner Cable* 13 FCC Rcd 16702 (Cab. Serv. Bur. 1998) (unrehearsed and ad hoc nature of programming).

Contrary to reflecting any "attempt to exert some form of editorial control" as StogMedia's Leased Access Application implies, Cox's legitimate inquiries regarding the nature of StogMedia's programming, StogMedia's rights to that programming, StogMedia's other channel lease agreements, StogMedia's authority to do business in Nevada, and StogMedia's financial qualifications all are directed to ascertaining Cox's liability risks in carrying StogMedia's programming and establishing appropriate and reasonable insurance, security, and other contractual protections. *See, e.g., R.K. Prod. Co. v. Adelphia Cable Communications*, 13 FCC Rcd 1559, para. 14 (Cab. Serv. Bur. 1997 (information from leased access programmer necessary for cable operator determination of costs). In addition, information regarding how StogMedia will deliver its programming to the cable system is relevant to protections Cox may need to prevent the introduction of computer viruses or other malicious computer code, the level of technical assistance StogMedia may require, and the cost of that assistance. *See, e.g., StogMedia d/b/a Stog TV v. CableOne, Inc.*, 24 FCC Rcd 2947 (Med. Bur. 2009) (method of delivery and technical assistance); *Engle Broadcasting v. Comcast*, 16 FCC Rcd 17650, at para. 7 (Cab. Serv. Bur. 2001) (no cable system responsibility to assist in delivering programming from a programmer's studio or production facility to the headend or input point of the system). As a practical matter, StogMedia will need to address these issues before a Leased Access Agreement with Cox can be finalized.

Thank you again for your continued interest in commercial leased access on Cox's Las Vegas cable system. If StogMedia wishes to commence carriage on the Las Vegas system, kindly provide the reasonable information Cox has repeatedly requested to ascertain the risks of carrying StogMedia's programming. Please contact us if you have any questions or wish to discuss a potential Leased Access Agreement further.

Charlie Stogner <stogtv@gmail.com>

Jun 4

to Leased

Does Cox qualify as a 'small system' or been granted 'special relief' as per the following?

For apparently no other reason than to be obstinate or with FCC's silence on Leased Access matters, Cox seems to have decided they're empowered to set the rules (conditions or terms) for leased access. Note the 'bona fide' request only applies to small systems or those granted 'special relief'. (i) *Qualify as small systems under Sec.76.901(c) and are owned by a small cable company as defined under Sec.76.901(e);*

You write StogMedia has refused to provide:

1. a description of the nature of the programming StogMedia proposes to transmit on Cox's cable system; ***Please check the revised application we submitted May 19 where in Exhibit B, we show the nature of the programming to fall in FCC category 3 "Other".***
2. evidence that StogMedia has obtained the copyrights, permits, licenses, and clearances necessary to publicly perform its programming, including copyrighted works, such as music, incorporated in its programming; ***In more than 20 years of exercising the right to leased access we've never had a cable system make list such a 'condition' The law has the cable company HELD HARMLESS as noted here: "SEC.638. Nothing in this title shall be deemed to affect the criminal or civil liability of cable programmers or cable operators pursuant to the Federal, State, or local law of libel, slander, obscenity, incitement, invasions of privacy, false or misleading advertising or other similar laws, except that cable operators shall not incur any such liability for any program carried on any channel designated for public, educational, governmental use, or on any other channel obtained under section 612 or under similar arrangements. Section 612:***
3. information regarding other channel license or lease agreements to which StogMedia is or may be a party; ***We find no evidence anywhere in the law and/or FCC materials that empowers a cable operator to require this of a leased access programmer. However we do have active agreements in a number of sites in various states.***
4. evidence of StogMedia's authority to do business in the state of Nevada; ***Will you please provide evidence of where this is required of a leased access programmers. We've never had this 'condition' imposed by any cable operator anywhere.***
5. evidence of StogMedia's financial qualifications; or ***Since we PREPAY all leased access airtime there is no justifiable reason for Cox to need or want to be privy to our finances. We are not requesting any extension of credit but pay in advance.***
6. an indication of how StogMedia will deliver its video programming to the cable system or whether and what technical assistance it may require. ***We first need to know how Cos, Las Vegas, receives and handles insertion of leased access content. Unless Cox's method of handling this is onerous and are applies unreasonable rates, we expect to use the method Cox has in place. Please indicate any 'tech' charges with the rates. Your rate info only says, If technical support is necessary there will be additional charges.***

It appears Cox is imposing 'conditions and/or terms beyond those the law and FCC permit. Although you say cable operators have the right to ascertain, among other things, "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.” Pray explain what ‘other relevant factors’ the law and/or FCC says you are entitled to inquire about.

INSURANCE . LESSEE agrees to obtain Errors and Omissions insurance, written by insurance carriers holding a Best's rating of A- or higher with limits of \$1,000,000 per occurrence. Actually I think you'll find FCC says specifically operators are permitted to only require “Media Perils’ coverage,

We’ve been pursuing exercising the right to carriage as leased access at Las Vegas far longer than it takes with any other cable operator we deal with and we deal with a lot.

We need to get an agreement in effect and have all details regarding delivery and insertion resolved in time to begin by June 16.

We’ve been using leased access airtime at one or more cable sites the past 21 years and presently do so with a total of 10 active cable sites. Never have we encountered such an attempt to impose ‘conditions and/or terms’ as is Cox.

Can we expedite this and how do we go about it. What else to you demand before you’ll permit us use of leased access airtime?

Charlie Stogner <stogtv@gmail.com>

Jun 5

2

to Leased, jennifer.hight., Joiava

I fail to find in my files the material in the following,

Cox previously provided StogMedia with all the information specified in Section 76.970(i)(1) of the FCC’s rules. *See* 47 C.F.R. § 76.970(i)(1). That information included the available leased access set-aside capacity in Cox’s Las Vegas system, a complete schedule of full-time and part-time leased access rates, a schedule of rates associated with technical and studio costs, and — although StogMedia did not request it and Cox was under no obligation to provide it — a sample leased access contract.

While I find a copy of part time rates, I do not see the 'associated with technical and studio costs' or at least no costs for such and/or a sample leased access agreement.

I did use info on 'insurance' from an old Cox agreement in my files but see no acknowledgement anywhere that Cox understands the precise type of coverage FCC says they may require. I do find where FCC has ruled all other types of insurance may not be required.

This matter is now urgent. Too much time has lapsed between our correspondence and we need to have some discourse on this today, Monday, June 5, 2017.

My guess at Derrick Hanson's email address didn't work. Please forward him a copy.

Charlie Stogner <stogtv@gmail.com>

Jun 5

to Leased

Since Cos is so adamant about knowing the 'nature' of the programming as a gesture of 'goof faith, we're providing the following about the show we'll air.

It's an 'infomercial' type show entitled "The Heart Attack Grill Diet" which urges viewers to adopt our high fat meat based diet. The infomercial is comprised of testimonials from various people and a few celebrities. It is humorous in nature.

There is no violence, profanity, or sexuality.

The producer and our local affiliate for the site is Dr. Jon, proprietor, Heart Attack Grill, Freemont Street, Las Vegas.

Now can we execute a formal leased access agreement for StogMedia on Cox' Las Vegas system?

Leased Access
Response <LeasedAccessResponse@cox.com>
to me

Jun 6

Thank you for your multiple messages on Sunday, June 4; Monday, June 5; and Tuesday, June 6.

Cox appreciates that in your message this morning (June 6) you finally have provided information regarding the nature of the programming StogMedia intends to present during its leased access time on Cox's Las Vegas, NV area cable system. Attached to this message is a proposed Leased Access Programming Agreement between Cox Communications Las Vegas, Inc. d/b/a Cox and StogMedia (the "Agreement"). Cox observes that StogMedia has yet to provide other information required under the Agreement, but we believe those items can be addressed directly in the terms and conditions of the Agreement.

Regarding the assertion in your June 5, 9:14 a.m. message that you cannot find in your files the information Cox previously provided under Section 76.970(i)(1) of the FCC's rules, attached to this message is Cox's April 6, 2017 message to you, with attachments. As you can see, all the information you claim you have been unable to find in your files was provided to you at least one month ago, including but not limited to the sample leased access programming agreement that Cox was under no obligation to provide at that point.

If you agree with the terms and conditions of the attached Proposed StogMedia-Cox Leased Access Agreement, please execute the Agreement and provide the required insurance certificate, security deposit, first month's payment and other information or payments, if any, required under the Agreement.

Charlie Stogner <stogtv@gmail.com>

Jun 15

to Leased, Joiava, jennifer.hight.

A week ago, June 7, StogMedia sent an attachment with email asking the schedule be changed to 3 months.

If we're not communicating we're not working toward an agreement.

Someone please respond so we can continue to work toward permitting StogMedia to exercise the right to airtime as prescribed by Congress.

Charlie Stogner <stogtv@gmail.com>

Jun 8

to Leased

As noted you say there are yet some items you can be addressed directly in the terms and conditions of the Agreement.

You write, *If you agree with the terms and conditions of the attached Proposed StogMedia-Cox Leased Access Agreement, please execute the Agreement and provide the required insurance certificate, security deposit, first month's payment and other information or payments, if any, required under the Agreement*, yet I see areas in the document that need attention.

Please see my attachment, 'notes to Cox...' and see if the agreement can't be revised according to the comments.

Hopefully we can agree on the revisions.

ATTACHMENT 3

Leased Access

Jun 16

Response <LeasedAccessResponse@cox.com>

to me

Thank you for your June 8 message and its attached "notes" document regarding the proposed Leased Access Programming Agreement between Cox Communications Las Vegas, Inc. d/b/a Cox and StogMedia (the "Agreement"), which Cox sent to you on Tuesday, June 6.

Cox has been offering leased channel capacity for commercial use on its cable television systems throughout the country consistent with Section 612 of the Communications Act, 47 U.S.C. § 532, and associated FCC rules, 47 C.F.R. §§ 76.701, 76.970, and 76.971, for almost thirty-three (33) years. During that time, every programmer that has leased channel capacity from Cox has, without objection, entered into a Leased Access Programming Agreement substantially similar to the one Cox recently provided to StogMedia. Cox is confident that its proposed Agreement with StogMedia is objectively reasonable and that it complies fully with both the letter and spirit of the FCC's leased access rules, orders, policies, and precedents. Indeed, Cox's experience with the vast majority of its leased access programmers confirms as much.

Nevertheless, to the extent StogMedia wishes to further negotiate the terms and conditions of the proposed Leased Access Programming Agreement, as your June 9 message apparently indicates, Cox will of course consider any reasonable counter-proposal StogMedia may wish to offer. As

you surely know from your many years of experience in the television industry, the universally accepted method of undertaking such negotiations is to provide a revision of the proposed Agreement reflecting the specific language and other suggested modifications to which StogMedia will agree. Cox cannot determine from the "notes" document attached to your June 9 message what exactly StogMedia is proposing. Therefore, if StogMedia wishes to counter-propose any changes to the Agreement, please provide to Cox a proposed revised Agreement at your convenience. If StogMedia believes any specific term or condition included in, or excluded from, the proposed Agreement is prohibited, or conversely required, by any FCC rule, order, policy, or precedent, kindly provide either the supporting document or the citation for it, and Cox will gladly review it. However, inasmuch as Cox designed the proposed Agreement pursuant to those rules, orders, policies, and precedents, Cox firmly believes it complies fully with them all.

Charlie Stogner <stogtv@gmail.com>

Jun 16

to Leased

This dealing with someone concealed behind a curtain and considerable legalize in the document presented as an 'agreement' is making it very difficult to believe Cox sincerely wants to be cooperative in this matter.

What about an agreement with the three (3) month, fully prepaid, schedule with the reservation it can be renewed for additional time when this expires and let's allow our programming to begin in July?

Meanwhile rather than having Cox review any proposed revised agreement created by StogMedia why not us simply begin under the one you've created and StogMedia then file a 'petition for relief' with FCC seeking to have them either confirm and deny the contested material.

I can understand that Cox has a 'vast majority' of leased access programmers that apparently accept the documents you present but I've learned over the years that many programmers have no idea of terms and/or conditions that may be voided should they file the proper petition with FCC challenging them.

I recall early dealings with Cox, some 10 or more years ago, when the documents Cox presented called for the programmer to be 'licensed'. Of course there is no provision whatsoever in the law and/or FCC rules that permits a cable operator to 'license' a programmer.

And while we're at it, having someone identifiable to communicate with would help.

I'm presently swamped. It's Friday and I badly need the Vegas airtime settled post-hast, so please respond with whether or not our proposed three (3) month prepaid lease is acceptable/

ATTACHMENT 4

Charlie Stogner <stogtv@gmail.com>

Jun 20

to Leased

Our attempt to secure airtime at Las Vegas via Leased Access has drug out now for several weeks and we have already incurred programming expense for the site.

Is it possible Cox can accept our request for a three (3) month schedule, execute us a formal leased access agreement, expediting this to allow us to get on the air by mid-July?

Ms. Philpott, you wrote on May 23 giving the impression she would follow up with me in a few days. I believe it's time a phone conversation between us could help.. Can you please call or email me a time I can call you.

Leased Access

Jun 20

Response <LeasedAccessResponse@cox.com>
to me

Thank you for your June 16 counter-offer to enter into the proposed Leased Access Programming Agreement between Cox Communications Las Vegas, Inc. d/b/a Cox and StogMedia (the "Agreement") for a term of three (3) months rather than the one year Cox offered. Cox respectfully declines your counter-offer.

As you know, StogMedia specifically requested an Agreement with a one-year term for daily carriage of video programming during the one-hour period from 1:00 a.m. to 2:00 a.m. Cox therefore offered you a form of its standard leased access programming agreement, which included among other things the one-year term and program schedule you requested. The proposed agreement Cox offered was substantially similar to the sample agreement Cox provided to StogMedia on April 6, 2017, which also included a one-year term and which all other programmers who lease channel capacity on Cox cable television systems essentially have signed.

Cox program carriage agreements with non-leased access programmers, including with both broadcast television stations and satellite-delivered cable programming services, generally include a standard three- (3) year term. However, inasmuch as most leased access programmers are unwilling or unable to make such a commitment, Cox has accommodated them by providing a shorter, one-year term for leased access carriage agreements. In fact, all of the agreements under which unaffiliated programmers lease channel capacity on Cox cable television systems have always been for a term of one year.

Given the scheduling logistics associated with the overwhelming prevalence of cable programming agreements covering one year and longer terms, Cox has not offered terms of less than one year for leased access programming. A one-year term is objectively reasonable and is the minimum term that Cox generally can offer as a practical matter.

Charlie Stogner <stogtv@gmail.com>

Jun 20

to Leased

My comments and response is in black-face and/or italic.

Do I understand correctly Cox 'declining' to provide us a three month schedule for programming at Las Vegas is the same as 'denying' carriage? The request for this schedule was not a 'counter offer' to anything but one we request to avoid the amount of deposit Cox was demanding if this were a 12 month schedule.

Your email said.....Thank you for your June 16 counter-offer to enter into the proposed Leased Access Programming Agreement between Cox Communications Las Vegas, Inc. d/b/a Cox and StogMedia (the “Agreement”) for a term of three (3) months rather than the one year Cox offered. Cox respectfully declines your counter-offer. *While we did originally request a leased access agreement for Las Vegas for one year with a tentative schedule, we found your deposit demands to be oppressive and subsequently have changed our request to be for a one-year agreement with a three-month schedule, with the understanding we expect to renew the schedule at expiration. In this request we propose to prepay the entire three month airtime bill, therefore eliminating any deposit requirement.*

As you know, StogMedia specifically requested an Agreement with a one-year term for daily carriage of video programming during the one-hour period from 1:00 a.m. to 2:00 a.m. Cox therefore offered you a form of its standard leased access programming agreement, which included among other things the one-year term and program schedule you requested. The proposed agreement Cox offered was substantially similar to the sample agreement Cox provided to StogMedia on April 6, 2017, which also included a one-year term and which all other programmers who lease channel capacity on Cox cable television systems essentially have signed.

Cox program carriage agreements with non-leased access programmers, including with both broadcast television stations and satellite-delivered cable programming services, generally include a standard three- (3) year term. However, inasmuch as most leased access programmers are unwilling or unable to make such a commitment, Cox has accommodated them by providing a shorter, one-year term for leased access carriage agreements. In fact, all of the agreements under which unaffiliated programmers lease channel capacity on Cox cable television systems have always been for a term of one year. *It appears from the wording in this paragraph that Cox is under the assumption they, not the law—not FCC, dictate the ‘terms and conditions’ for leased access as provided System pursuant to Section 612 of the Communications Act of 1934 as amended (the “Act”*

Given the scheduling logistics associated with the overwhelming prevalence of cable programming agreements covering one year and longer terms, Cox has not offered terms of less than one year for leased access programming. A one-year term is objectively reasonable and is the minimum term that Cox generally can offer as a practical matter. *While you say ‘practical matter’ is why you require the one-year term there are cases where FCC has ruled a local system must provide a schedule for as little as one half-hour show in a month. It’s also very doubtful you can find were FCC has indicated one-year agreements are to be provided should they be requested.*

In that leased access is ‘site-specific’ involving scheduling at individual sites, somewhat the same as scheduling local ‘ad inserts’ in network channels, the ‘logistics’ should not be overwhelming While Cox says the ‘accommodate’ leased access airtime requests, it seems this is more a fulfillment of an obligation of a special law.

There is a significant difference in the formal leased access agreement whereby the cable operator and leased access programmer agree both will follow the law and rules governing

carriage and the actual airtime orders. We find nothing in the law or FCC rules governing a minimum schedule while there is evidence the Commission has ruled

This is an urgent need for some oral communication to discuss this matter.

In doing a more careful review of Cox' proposed agreement, something that appears to be more of an adhesion contract than any 'agreement', one of the first things noted in the opening paragraph says it is for cablecasting a specific video program, described in Exhibit A, something that does not fit in the FCC category for leased access.

However in item 1, it refers to allowing other Exhibits, While we provided you the name and description of the show we plan to air in our attempt to humor you, it needs to be pointed out that nowhere in FCC's rules does it say individual shows must be so identified. In fact normally our leased access programming falls into FCC's category 3, "other". There are instances where FCC has described this as the type television usually equated with local broadcast stations.

A sane and sensible approach to handling leased access would have the formal agreements in effect much like an annual Second Class Mail permit, being a document that proves the LAPeer (leased access programmer) understands that although the cable operator is 'held harmless' from the content of their shows, the LAPer is nevertheless responsible for it. The agreement, should the cable operator require it, provides evidence the LAPer carries "Media Perils" insurance, the only type policy FCC permits operators to require. This should serve to prove the LAPer is qualified to then place airtime orders assuming the requested time slots are available.

*While Cox permits a lessee to terminate with 30 days notice the requirement to pay in full all amounts that would have become payable during the remainder of the schedule appears to be more 'punitive' than 'good business'. **Our present request for a three month schedule we propose to prepay in full makes this a 'moot' issue.***

As did Cox founder, James M. Cox, I too came from the farm to newspapering and I don't believe he in any way would be pleased with the manner in which today's Cox Cable tries so hard to make it difficult for programmers to exercise the right to leased access, more specifically in trying to evade the letter of the law and certainly not in any way trying to follow the 'spirit of the law', not in the manner Congress prescribed.

By the way, is it not possible for Cox to at least be considerate enough to share with me the individual I am communicating with?

Leased Access

Jun 22

Response <LeasedAccessResponse@cox.com>
to me

Cox received your June 20 message regarding the proposed Leased Access Programming Agreement between Cox Communications Las Vegas, Inc. d/b/a Cox and StogMedia (the "Agreement"). To answer your question: no, Cox obviously is not denying carriage; StogMedia simply refuses to take "yes" for an answer.

As you know, Cox offered the proposed Agreement to StogMedia on June 6, 2017 based on StogMedia's incomplete Leased Access Application, which specifically requested an Agreement with a one-year term for daily carriage of video programming during the one-hour period from 1:00 a.m. to 2:00 a.m. In a June 8 message, StogMedia rejected Cox's offer, which had included exactly the term and carriage schedule StogMedia had previously requested. Despite its best efforts, Cox could not understand from your June 8 message precisely what StogMedia's objections to the proposed Agreement were, and therefore on June 16 invited StogMedia to propose a revised Agreement reflecting the specific language and other suggested modifications to which StogMedia would agree. StogMedia rejected that invitation the same day in an email message, but instead proposed to change the term of the Agreement to three months. Cox declined StogMedia's counter-offer on June 19.

Today, having reviewed StogMedia's June 20 message, Cox again cannot understand precisely the terms and conditions StogMedia is now proposing or those to which it objects. Nevertheless, based on Cox's good-faith effort to make sense of StogMedia's message, Cox believes StogMedia objects to providing a deposit because it is "oppressive" and now objects to the one-year term StogMedia itself requested because the FCC has established a minimum part-time leased access schedule increment of one-half hour. Cox similarly does not completely understand StogMedia's statement that it has "changed our request to be for a one-year agreement with a three-month schedule." Based on StogMedia's related statement that it now "propose[s] to prepay the entire three month airtime bill," however, Cox believes StogMedia is now proposing a one-year term Agreement with quarterly payments made in advance.

If that is StogMedia's counter-proposal, Cox accepts it, and contingent on StogMedia's apparent agreement to prepay the annual lease quarterly in advance Cox in this case will agree to waive the security deposit requirement initially subject to it being re-imposed at Cox's discretion if StogMedia fails to make any payment when due.

StogMedia's position regarding the security deposit is misplaced because, among other things, Section 76.971(d) of the FCC's rules, 47 C.F.R. § 76.971(d), states explicitly that "[c]able operators may require reasonable security deposits or other assurances from users who are unable to prepay in full for access to leased commercial channels." The FCC, moreover, has repeatedly upheld as reasonable security deposits for as much as fifty percent of a leased access agreement's value, which is far greater than the security deposit Cox initially requested from StogMedia. *See e.g. United Multimedia Productions, Inc. v. CSC Acquisition-New York, Inc.*, 16 FCC Rcd 5234, 5238 (Cab. Serv. Bur. 2001); *Lorilei Communications, Inc. v. Cablevision of Monmouth*, 13 FCC Rcd 13919, 13924 (Cab. Serv. Bur. 1998). In this case, the standard security deposit Cox initially requested is reasonable and is more than justified because as you know StogMedia, among other things, has refused to provide any evidence of its financial qualifications to Cox.

In addition, StogMedia's new position, as we understand it, is that the one-year term StogMedia specifically requested in writing is inconsistent with FCC rules requiring a minimum half hour scheduling increment. This also is plainly erroneous. Cable

operators are required to accommodate part-time lease schedules in as small as half-hour increments, and must “accommodate any request for part-time leased access for at least eight contiguous hours, for the same time period every day, for at least a year.” *See* 47 C.F.R. § 76.971(a)(4). Scheduling increments, however, are unrelated to contract length, and the FCC specifically declined to establish a minimum leased access contract length that cable operators must offer. *Second Leased Access Report and Order*, 12 FCC Rcd 5267, 5321-23 (1997). Cox observes that leased access producers argued minimum contract lengths of one year or five years were necessary to justify “other business expenses” and the “need to obtain financing or to make long-term investments in leases and equipment.” *Id.*, at 5321-22, paras. 108 and 110. The FCC declined to impose a minimum one-year or five-year contract length as the leased access producers requested, but stated its concern that “operators not unreasonably *limit* the length of a contract with a leased access programmer.” *Id.*, at 5323 para. 111 (emphasis added); *see* 47 C.F.R. § 76.971(g).

Cox obviously is not in any way attempting to limit the length of the proposed Agreement, and would gladly accept a longer term Agreement consistent with its other non-leased access programming agreements. Moreover, nothing in the FCC rules, policies, or adjudicatory decisions of which Cox is aware requires it to offer StogMedia a leased access contract term of less than one year. A one-year term is undeniably reasonable, and is common in a wide variety of commercial contexts. This is confirmed in this specific context both by StogMedia’s written request for a one-year term and by the typical contract lengths of Cox’s agreements with leased access and non-leased access programming services on its cable systems throughout the country.

In any case, based on StogMedia’s apparent proposal to enter into a one-year agreement with quarterly advance payments, attached is a revised Agreement incorporating those terms and waiving, initially at least, the security deposit requirement. If StogMedia agrees with the terms and conditions of the attached proposed StogMedia-Cox Leased Access Agreement, please execute the Agreement and provide the required insurance certificate, first quarter payment and other information — such as music information (Exhibit D) and method of programming delivery (Exhibit C.3) — or payments, if any, required under the Agreement.

On the other hand, if StogMedia wishes to counter-propose any changes to the Agreement, provide a proposed revised Agreement reflecting the precise terms and conditions, and associated contractual language, to which StogMedia will agree. If StogMedia believes any specific term or condition included in, or excluded from, the proposed Agreement is prohibited, or conversely required, by any FCC rule, order, policy, or precedent, provide either the supporting document or the citation for it, and Cox will gladly review it. If Cox must continue to speculate regarding StogMedia’s proposals based on its ambiguous electronic messages, however, that can only delay the completion of a mutually acceptable Agreement.

ATTACHMENT 5

to Leased

Were the schedule revisions made to the Las Vegas agreement satisfactory and, if so, may we expect the final version and the invoice today?

Thanks for working with this.

Charlie Stogner <stogtv@gmail.com>

Jun 28

to Leased

What's the status of the StogMedia leased access agreement for Las Vegas?

Thanks

Charlie Stogner <stogtv@gmail.com>

Jun 28

to Leased

What seems to be the 'hang up' on executing this agreement?

Charlie Stogner <stogtv@gmail.com>

Jun 26

to Leased

We accept your latest agreement with the start date of July 21. However we note we made a serious error in the schedule and we show this on Exhibit B, changing to 3-4pm daily. Based on rates in Exhibit F, we're prepared to pay the initial first quarter in full as soon as we can receive an invoice.

Billing needs to be sent to:

Heart Attack Grill

450 Fremont Street #130

Las Vegas, NV 89101

Can be sent electronically to jon@heartattackgrill.com with copy to stogtv@gmail.com

We're prepared to sign the agreement once revised to the new schedule and will do so and return as soon as we receive the revised copy.

This is based on your comment in your latest email which reads:

"In any case, based on StogMedia's apparent proposal to enter into a one-year agreement with quarterly advance payments, attached is a revised Agreement incorporating those terms and waiving, initially at least, the security deposit requirement. If StogMedia agrees with the terms and conditions of the attached proposed StogMedia-Cox Leased Access Agreement, please execute the Agreement and provide the required insurance certificate, first quarter payment and other information — such as music information (Exhibit D) and method of programming delivery (Exhibit C.3) — or payments, if any, required under the Agreement."

Exhibit B...needs to be corrected TO:

Initial cablecast of Programming:

Date: July 21, 2017 Time: 93:00 p.m. —4PM

Subsequent cablecasts

Day(s): Daily (Monday — Sunday) Time(s) 3:00 p.m. — 4:00 p.m.

We realize this changes the billing to

3 to 4pm daily @ \$108.27 per hour..... 30 day months, \$3,248.10; 31 days, \$3,356.37; quarterly \$9,842.57.

The only music will be 'royalty free'; delivery will be by your method of receiving leased access at Las Vegas and payment will be sent as soon as we receive an invoice for the first quarter.

I've attached a copy of our affiliate authorization informing Cox of Jon Basso as our official affiliate fully authorized to act on our behalf involving Las Vegas programming, including making direct payments.

Please advise if this is satisfactory and if so please invoice us ASAP.

AFFIDAVIT 6

Leased Access

Jun 26

Response <LeasedAccessResponse@cox.com>

to me

As requested in our previous response dated 6/22, *"On the other hand, if StogMedia wishes to counter-propose any changes to the Agreement, provide a proposed revised Agreement reflecting the precise terms and conditions, and associated contractual language, to which StogMedia will agree."*

Charlie Stogner <stogtv@gmail.com>

Jun 26

to Leased

I hope that my email was not considered a 'counter proposal' but rather our desire to accept the terms you mentioned but with the changed schedule.

The scheduling error was mine due and I hope you can accept it.

Please let me know

Leased Access

Jun 26

Response <LeasedAccessResponse@cox.com>

to me

Pleas revise the agreement with any changes and return.

StogMedia NOTE: At this time we have our insurance clerk provide Cox with the ACORD form. Form this point forward, the correspondence will be concerning insurance.

Charlie Stogner <stogtv@gmail.com>

Jun 28

to Meleasia

Please execute an ACORD form for Cox

Cox Communications Las Vegas, Inc.
1700 Vegas Drive
Las Vegas, NV 89106

and forward me as an attachment. I'll put in a Las Vega file and then forward as an attachment when I return the executed agreement this afternoon.

Meleasia Shaw <mshaw@stogneragency.com>

Jun 28

to me

Here it is. Let me know if you need anything else....

Charlie Stogner <stogtv@gmail.com>

Jun 29

to Leased

Sorry about the 'copy and paste' error, leaving the Alabama info. I'm attaching a corrected affidavit for Dr. Jon.

Understand the different rate, different tier. The check is being issued by Dr. Jon today and sent being mailed as per invoice to: Cox Media, P.O. Box 50464, Los Angeles, Ca 90074

The show is still being edited and the info on your Exhibit D will be submitted as per instructions with the programming or before.

Who will be our contact, name, email, phone when submitting content?

Attached is the insurance ACORD form. The signed agreement and correct affiliate info.

ATTACHMENT, agreement, corrected affiliate form, Attachments 8,9&10

Affidavit:

Official notification of

Jon Basso "Dr. Jon", d.b.a Heart Attack Grill

Authorization to act on behalf of StogMedia

This instrument is to affirm that **John Basso or his assign** is duly authorized to act on behalf of StogMedia in any dealings with Cox Communication, Las Vegas and any 'interconnected' sites for which we may execute a leased access agreement and to perform any and all duties involved in producing local coverage of news, events and other content aired by StogMedia on the local cable channels.

This includes, but is not limited to: Expanding coverage to any 'interconnected' sites, executing and prepaying airtime schedules; negotiating and executing matters related to the physical delivery of programming to be on the local channels designated for 'leased access' content whether this be via physical means within the confines of the 'headend' or via some remote, direct, feed arrangement.

This authority is to run concurrent with any 'channel lease agreement' in effect between StogMedia and "Cox".

StogMedia is a video production/distribution firm specializing in using 'leased access' airtime on selected cable systems.

ATTESTED:  , DATE June 23, 2017
'Charlie' Stogner, Senior Partner, StogMedia

Charles H.

StogMedia *"Cablevision programming production and distribution"*
<http://www.stogmedia.com>

5146 Beauregard Rd., Wesson, Ms. 39191 email: stogtv@gmail.com Phone 601-914-6672

Leased Access
Response <LeasedAccessResponse@cox.com>
to me

Jul 3

Thank you for your June 29 message with attachments, which included an electronically signed Leased Access Programming Agreement between Cox Communications Las Vegas, Inc. d/b/a Cox and StogMedia (the "Agreement"), an "Affiliate affidavit for Dr. Jon," and a form of ACORD Certificate of Liability Insurance. As explained below, the ACORD Certificate StogMedia provided is inconsistent with the requirements of Section 6 of the Agreement. Cox therefore must review the underlying AXIS Insurance Policy (the "Policy") to confirm its compliance with the Agreement. Please send Cox a complete copy of the Policy, including all riders and attachments, to Cox as soon as possible to ensure that StogMedia's programming may be carried on the Las Vegas cable television system consistent with your desired schedule.

Section 6(a) of the Agreement requires that:

LESSEE shall obtain and have in effect at all times during the Term, **Errors and Omissions insurance**, written by insurance carriers holding a **Best's rating of A- or higher** with limits of \$ 1,000,000 **per occurrence** covering liability arising from all shows provided to the LESSOR. LESSEE shall obtain **individual certificates for each state** within which any System listed in Exhibit B(s) is located in whole or in part. **The policy shall provide for thirty (30) days' prior written notice to LESSOR of**

any material change, non-renewal or cancellation of coverage. Prior to execution of this Agreement and each time that a change is made in the Policy, the carrier, or Exhibit B resulting in the addition of a System necessitating an additional State certificate, LESSEE shall deliver to LESSOR a Certificate(s) of Insurance evidencing such coverage and naming each LESSOR listed on any Schedule B as an additional insured under the policy as evidence of coverage obtained per this section and shall not limit or restrict any indemnification obligation of the LESSEE under this Agreement.

The Certificate StogMedia provided is inconsistent with Section 6 of the Agreement for the following reasons:

1. The Certificate is not properly completed. In particular, the policy is marked in the “general liability” box, which is inappropriate. General liability insurance policies provide only limited media liability coverage but are insufficient for any company in the media business.
2. The Certificate fails to reflect that the policy provides for the coverage required or that each Cox person or entity listed on Schedule B of the Agreement is “an additional insured” under the policy.
3. The Certificate fails to reflect that the policy provides for 30 days’ prior written notice to Cox of any material change, non-renewal or cancellation of coverage.
4. The Certificate fails to reflect that the policy is effective in the state of Nevada.
5. The Certificate fails to reflect that the policy “per occurrence.”
6. According to the Certificate, the policy expires April 16, 2018, which is several months before the Agreement would expire.

In addition, please be aware that Cox has yet to receive the required advance payment, and has not received notice regarding which of the acceptable specified file formats StogMedia will use to deliver its Programming or whether StogMedia plans to deliver its Programming in the form of a physical DVD-R or DVD-RW (*see* Agreement, Exhibit C.3).

Thank you again for leasing channel capacity on Cox’s Las Vegas, Nevada cable television system. Please provide a copy of the AXIS Insurance policy that is consistent with Section 6 of the Agreement at your earliest convenience.

to Leased

Let's try a different tactic.

How about Cox providing me with a copy of an actual ACORD form used by an active leased access programmer so that I can in turn see that my insurance carrier can duplicate it within our policy. I need evidence Cox has required other LAPers (leased access programmers) to provide complete copies of their Insurance policy.

All of this needs to be done immediately so as to not drag out our start with Las Vegas programming.

Our Las Vegas affiliate, Joe Basso, has informed me a check number 5429 as the prepayment for the first quarter has been mailed and has asked if the show on channel 48 3 to 4 pm, seven days a week, will be shown on the channel guide as "Heart Attack Grill" rather than 'leased access programming/.

What is it going to take to get an identifiable Cox individual from behind the 'keyboard' shield to have some reasonable dialogue re matters concerning leased access? Oddly other cable operators seem to be able to do so.

We need a more cooperative method of handling this.

47 of 70

INSURANCE AGAIN...

Cox is being more than difficult

Charlie Stogner <stogtv@gmail.com>

Jul 5

TO Meleasia

Study the following then email me and I'll call. We need to talk about this.

From Cox:

any material change, non-renewal or cancellation of coverage. Prior to execution of this Agreement and each time that a change is made in the Policy, the carrier, or Exhibit B resulting in the addition of a System necessitating an additional State certificate, LESSEE shall deliver to LESSOR a Certificate(s) of

Insurance evidencing such coverage and naming each LESSOR listed on any Schedule B as an additional insured under the policy as evidence of coverage obtained per this section and shall not limit or restrict any indemnification obligation of the LESSEE under this Agreement.

The Certificate StogMedia provided is inconsistent with Section 6 of the Agreement for the following reasons:

1. The Certificate is not properly completed. In particular, the policy is marked in the “general liability” box, which is inappropriate. General liability insurance policies provide only limited media liability coverage but are insufficient for any company in the media business.
2. The Certificate fails to reflect that the policy provides for the coverage required or that each Cox person or entity listed on Schedule B of the Agreement is “an additional insured” under the policy.
3. The Certificate fails to reflect that the policy provides for 30 days’ prior written notice to Cox of any material change, non-renewal or cancellation of coverage.
4. The Certificate fails to reflect that the policy is effective in the state of Nevada.
5. The Certificate fails to reflect that the policy “per occurrence.”
6. According to the Certificate, the policy expires April 16, 2018, which is several months before the Agreement would expire.

RE: StogMedia - Policy & Invoice

Meleasia Shaw <mshaw@stogneragency.com>

Jul 6

to me

Here is the policy....Let me know if they can tell you clearly what they want done and I will be glad to fix the COI.

From: augusta.kelley@amwins.com [mailto:augusta.kelley@amwins.com]

Sent: Monday, April 17, 2017 7:55 AM

To: mshaw@stogneragency.com

Subject: StogMedia - Policy & Invoice



Please find the attached E&O - Media/Publishers/Broadcasters Policy for the following account:

ACCOUNT NAME: StogMedia
POLICY NUMBER: MCN000108521701
POLICY PERIOD: 4/16/2017 - 4/16/2018
CARRIER: AXIS Insurance Company

The policy sets out the precise coverage terms and conditions that have been bound. Please review the policy carefully. If after review, you find any errors in the issuance, please contact us immediately to discuss.

AXIS Insurance Company issues policies and endorsements electronically. As such, we won't be mailing a printed copy.

Should you have any questions or need anything further, please feel free to contact me.

Thank you for your business. We truly appreciate it.

Charlie Stogner <stogtv@gmail.com>

Jul 7

to Leased

attached is copy of our Axis policy that we've used for a number of years and that seems to have satisfied all other cable operators than Cox.

While this reads as "Film & Entertainment Liability Policy Declarations", we've been informed by our carrier this is 'media perils' coverage.

Will this satisfy your 'insurance' conditions?

Corrected ACORD form

Charlie Stogner <stogtv@gmail.com>

Jul 6

to Leased

Same policy as has been accepted by a large number of other cable operators for the past few years with Axis as our carrier.

StogMedia has had a policy with 'Media Perils' coverage provided to cable operators where we have exercised the right to leased access since we began in 1996.

Hopefully this form with the policy listed in the proper 'box' satisfies your demands. Please advise since this request is now taking far too long.

ATTACHMENT 12 ACORD

Leased Access

Jul 7

Response <LeasedAccessResponse@cox.com>
to me

Cox received your various messages, collectively dated July 3 and July 6, complaining about StogMedia's failure to comply with the reasonable insurance requirements of the Leased Access Programming Agreement (the "Agreement") you signed. Before continuing with any further correspondence on this subject, Cox suggests that StogMedia actually read the Agreement, and in particular Section 5, Section 6, Section 8, Section 9, Exhibit C, and Exhibit D.

Cox's message of July 3, 2017 previously explained to StogMedia in detail why the ACORD Certificate StogMedia previously provided is inconsistent with the requirements of Section 6 of the Agreement. In light of StogMedia's non-compliant Certificate, and in an effort to meet StogMedia's requested carriage schedule, Cox specifically requested a review of the underlying AXIS Insurance Policy (the "Policy") to confirm whether the Policy was compliant with the Agreement StogMedia signed. True to form, StogMedia ignored that request in favor of an irrelevant exegesis regarding its view of various FCC decisions and its purported experiences with other cable operators. Cox will not reiterate the reasons or requirements set forth in its July 3 message here other than to observe that for the most part they remain applicable to the insufficient revised Certificate StogMedia forwarded to Cox yesterday. StogMedia should understand, however, that unless and until the prerequisites of the Agreement it signed are satisfied, StogMedia's programming will not be carried on Cox's Las Vegas, Nevada cable television system. Therefore, to the extent that carriage of StogMedia's programming does not commence in accordance with its preferred schedule or is not carried, that is due entirely to StogMedia's conduct and its failure to comply with its agreed-upon obligations.

Cox also reiterates that it has not received notice regarding which of the acceptable specified file formats StogMedia will use to deliver its Programming, and has not been informed whether StogMedia plans to deliver its Programming in the form of a physical DVD-R or DVD-RW (see Agreement, Exhibit C.3). Absent StogMedia's compliance with the terms of the Agreement it signed, Cox sees no reason to continue this discussion.

Charlie Stogner <stogtv@gmail.com>

Jul 9

to Leased, bcc: 1002842

Wow! What a word. This one, *exegesis*, drove me to my Thesaurus and I ‘don’t get it’ But considering the synonym ‘explanation’, I’ve failed in getting Cox to carefully read and follow the letter of the law much less intent.

It’s noted in your last email you write: “*Absent StogMedia’s compliance with the terms of the Agreement it signed, Cox sees no reason to continue this discussion.*” StogMedia has NO choice other than attempting to overcome each obstacle Cox keeps placing in our path. While this is concerned with a particular site, I see it now as an industry issue that must be thoroughly resolved and publicized to avoid other programmers from being faced with these same unrealistic demands.

In that message, Cox wrote, “Before continuing with any further correspondence on this subject, Cox suggests that StogMedia actually read the Agreement, and in particular Section 5, Section 6, Section 8, Section 9, Exhibit C, and Exhibit D.”

Interestingly not too long ago when leased access info was requested Cox would send their “INSTRUCTIONS FOR LEASED ACCESS APPLICATIONS” that has the following in the opening paragraphs.

1. Cox Communications (“Cox”) accepts applications for the licensing of available channels or bandwidth for the cable transmission of video programming to Cox subscribers.

2. Applicants for such licenses must, at a minimum, demonstrate to the satisfaction of Cox that they possess the requisite legal, financial, technical, and other qualifications. Each applicant must complete the following written application in full as furnished by Cox, including outlining the applicant’s planned use of the channel, qualifications and experience. Cox shall have the right to take such steps as it deems necessary in its sole discretion to determine the qualifications of the applicant, and the applicant shall furnish to Cox all such information and data for this purpose as Cox may request;

I’ve been reading and re-reading every bit of material I’ve been able to find from FCC and/or all other sources and fail to find where the law allows an operator to ‘license’ a leased access programmer or where it clearly defines the operator has ‘sole discretion’ in determining qualifications. In fact, your most recent ‘application’ is focused primarily on content while the law explicitly states operators are not to.

Okay, you suggest I ‘actually’ read the Agreement and in particular Section 5, Section 6, Section 8, Section 9, Exhibit C, and Exhibit D.

Here we go:

Section 5: Fees and Payments. I understand the check for the first quarter has been received and deposited by Cox. I suppose if you insist this must be done 30 days in advance and does appear this is an excessive period of time as per Exhibit C, nevertheless it has been done

While on C and without benefit of having been able to have our production personnel talk with the headend technicians, we will opt to use your SpotXpress with whatever format your tech wants.

Section 6: We're going to Nth degree to try to provide you this info in spite of your refusing to cooperate by providing us a copy of the ACORD form showing how a LAPer (leased access programmer) satisfies you demands and otherwise at a minimum discussing this. StogMedia has been carrying Media Perils coverage and providing the ACORD forms to cable operators for years and considers it a good type coverage for programmers. We've not objected to Cox' insurance requirement except to the extent they have required us to provide a copy of the policy. Should we have to ask FCC in a Petition for Relief to look into this as a matter of 'principle' and seeing that Cox was acting within the scope of the rule, we need to point out when we asked for cooperation in this matter, asked to be provided a copy of an ACORD form in use with a programmer's carriage, Cox refused.

Again, we have no problem with carrying 'Media Perils' coverage but do feel Cox is being somewhat unreasonable in their demand.

Here's an interesting FCC order regarding insurance that has been 'lifted' from a "Petition for Relief" where a leased access programmer questioned the operator's requirement. "... the Commission stated that insurance requirements must be reasonable in relation to the objective of the requirement. The Commission further stated that determinations of 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 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. The burden of proof in establishing reasonableness was placed on cable operators.

In this case FCC ordered required the operator to make leased access available to the leased access programmer without any insurance requirement, unless a reasonable justification of the required coverage and policy dollar limits has been provided to the programmer. Such justification shall address the operator's practices with respect to insurance requirements imposed on non-leased access programmers, the likelihood that the leased access programming will pose a risk of liability for the operator, previous instances of litigation arising from the leased access programming, and any other relevant factors.

Section 8: While the law says “*a cable operator shall not exercise any editorial control over any video programming provided pursuant to this section, or in any other way consider the content of such programming, except that an operator may consider such content to the minimum extent necessary to establish a reasonable price for the commercial use of designated channel capacity by an unaffiliated person*” we will provide the material demanded in Exhibit prior to airing. This has not yet been finalized but will be at that time.

Section 9: We will here, as we have for years with using leased access, meet these conditions. Our material will not contain any lewd or obscene content.

The overall tenure of the entire document has it appearing to be much more of an ‘adhesive contract’ than what should be a simple agreement that StogMedia qualifies as a programmer. Much of the language in this document seems to be that of ‘contract law’, not the type agreement Congress apparently wanted FCC to have cable operators adhere to.

Is it possible that perhaps now we can reach a level less adversarial as StogMedia seeks to exercise leased access carriage on other Cox systems.

Status Las Vegas agreement

Charlie Stogner <stogtv@gmail.com>

Jul 12

to Leased, Joiava, jennifer.hight., bcc: Nancy

Please share with me what, if any, additional obstacles I must overcome to get an active agreement here.

I've been going through old email records and find where we have had active agreements as recent as '09/ Insurance appeared to be okay then.

Charlie Stogner <stogtv@gmail.com>

Jul 13

to Leased

We need to know what is going on with this request.

Is Cox doing what it takes to insure the only way we can get airtime is to accept their rules, terms and conditions or is Cox honestly trying to see if StogMedia doesn't qualify for carriage with Cox as we have with dozens of other sites?

We need some sign of action.

Insulting at the least

Jul 17

Charlie Stogner <stogtv@gmail.com>

to Mallard.Hollididay;(VP. Public Relations, Cox Communications. At this point Stogmedia wrote Cox Public Relations in hopes they would see how the manner Cox was treating our attempt to secure carriage via 'leased access' could affect their image and perhaps intervene in the proceedings.)

I find Cox Communications, especially Joiava Philpott's and/or whoever is the individual communicating (or rather NOT communicating) with me regarding my efforts to exercise the right to leased access airtime at Las Vegas to be beyond comprehension.

There is no question but what Cox will eventually have to provide this but in the meantime they're putting a serious hurt on my firm, StogMedia, and our local affiliate that will be operating our Las Vegas programming. So far this affiliate is out over \$12,000 in prepayment of funds and related startup expense plus whatever has been spent thus far on production.

So far Cox' behavior has been unconscionable and even has the appearance of maliciousness as they combine unreasonable conditions or presently simply refuse to communicate in the agreement.

It makes no sense to permit this type conduct to continue without at least sharing it with FCC, members of Congress, trade, business and general news media.

Put yourself in my shoes and let me know how you would bring this to the light of day.

A quick review of FCC materials should easily show Cox management that while they are making StogMedia suffer, they eventually will have to provide the access.

While Philpott and Jennifer Hightower may see Cox on a legal footing I've found during my 55 plus years in media that being technically 'right' legally can often be a big 'wrong' in public relations and Goodwill.

I'm asking you to consider seeing if you can't persuade Cox to resume communications as we work toward a resolution on Las Vega.

Respectfully,

Charlie Stogner

Charlie Stogner <stogtv@gmail.com>

Jul 17

to Leased, Joiava, jennifer.hight.

We need to know what step we must perform to get Cox to continue communicating on our effort to gain leased access carriage at Las Vegas.

You've got us over a barrel, money, serious money, has been spend for production, prepaying airtime and more and yet now for days there is NO word from Cox.

Please cooperate.

Charlie Stogner <stogtv@gmail.com>

Jul 14

to Joiava

I assumed you were going to discuss Comcast's leased access agreement, its terms, conditions, etc. when I received your May 23 email. Obviously I was mistaken.

In that message you said you were familiar with my activity in leased access and I guessed you were aware I not only operate the only known nationwide network of local sites, having had carriage at dozens of sites, literally border to border, coast to coast, over the past 20 years and also serving as president of the national association since its formation in the early 2000's you would have recognized I struggle mainly on principle, on trying to insure FCC sees that cable operators adhere to the law and rule.

Since my earliest dealings with Cox it has been noticeable they not only once tried to make a leased access user a 'licensee' rather than a lease as per the law and they have constantly gone overboard on seeking information that is more concerned with their interest in editorial content than in carrying out the intent of the law as set out by Congress.

I'm disappointed in the way Cox drags out presenting an agreement that is reasonable and more closely follows what is in the rules than what they are doing.

For example, the insurance factor is a 'red herring' that came into existence years ago when cable operators realized FCC would support them on the issue of 'media perils' based on the remote possibility someone would bring suit against an operator over some leased access show portraying lewd or obscene content. This type policy is so expensive that those hoping to use leased access for only limited part time quickly realized they couldn't justify it for their operation and therefore dropped pursuit of airtime.

Operators like StogMedia, growing from a newspaper background like Cox, sees 'media perils' not as a necessary type coverage for airing a variety of genre of content including news and talk shows. We carry it for our own editorial protection.

However with Cox being so demanding on this it needs to be noted FCC says; *The Commission further stated that determinations of 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 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 factor*[\[1\]](#) **The burden of proof in establishing reasonableness was placed on cable operators.**

How about the two of us take a step backwards, approach this in a truly professional manner and discuss this in a manner that has Cox as interested in insuring they follow the 'intent' of the law as furiously as they try to make it difficult for us to secure carriage/

FCC rules are that programmers must operate under whatever agreement they enter into with an operator when filing 'petitions for relief' and only if the programmer prevails will the operator be made to correct any deficiencies. With this in mind, StogMedia has no choice but to at some point accept whatever 'terms and conditions' Cox insists on making part of the documents since it is basically the same as an 'adhesion contract' much like an insurance policy, one either accepts their document or does not get carriage. We're entitled to carriage under the law and in that case may have to sign an agreement containing provisions we later seek to have FCC rule against.

Whatever the case, we need to end this stonewalling and communicate adequately to get us on the channel ASAP.

Philpott, Joiava (CCI-Atlanta-LD) <Joiava.Philpott@cox.com>
to me

Jul 17

Mr. Stogner,

I am aware that the Cox Leased Access team has been extremely responsive to your numerous requests. With respect to any remaining issues, a response is forthcoming.

Sincerely,

Joiava Philpott

Charlie Stogner <stogtv@gmail.com>

Jul 18

to Joiava

Your message that you are aware Cox has been 'extremely responsive' caused me to look up the definition of responsive and this is what showed up number one in Google search.

1. reacting quickly and positively. "a flexible service that is **responsive to** changing social and economic patterns"

synonyms: quick to react to, reactive to, receptive to, open to suggestions about,
amenable to
flexible to, sensitive to,
sympathetic to;
aware of

Of these synonyms, which do you think is representative of how Cox has 'responded' as I've attempted to generate discussion regarding the proposed agreement? Certainly not 'quick' and I haven't seen anything anywhere near 'receptive to' or 'open to suggestions' or 'flexibility'.

The attachment includes some random notes I made over the weekend and due to your message about a response being 'forthcoming' I thought I may as well share these. I'm sending as an attachment since 'cut and paste' often messes up the formatting.

ATTACHMENT 12

Charlie Stogner <stogtv@gmail.com>

Jul 18

to jennifer.hight.

Ms. Hightower, during all my 20+years of exercising the right to leased access, I've encountered a couple instances where outside counsel, probably billing by the hour, has acted on behalf of independent cable operators in trying unsuccessfully to force us to accept conditions beyond the scope of Section 612.

We've had no real problems with gaining carriage with Comcast, Time Warner, Charter, TCI, Bright House, Mediacom, Cable One and others that at the moment don't come to mind. Never has any other than Cox found our insurance unacceptable.

However, my experiences with Cox, the lengthy delays in what need to be continuing correspondence (discussion by email as it is), I have a strong suspicion the goal is to force the company's own desires, not that of the law, on StogMedia.

There is no rational reason we should not have by now worked on our differences until we reached some are of agreement. While I've tried to answer some of your conditions I don't fee are justified in the rules, Cox has yet to answer any of mine. Now I don't think that's the sign of a cooperative effort to reach accord.

Cox has StogMedia in a serious bind. The way FCC handles leased access disputes and Cox' position we do it 'your way or the highway' means we'll eventually have to sign a document we feel is unfair and then file for relief with FCC. If that's what it takes we have no choice. We can only hope we prevail at FCC and Cox never acts this way with another programmers seeking leased access carriage.

So, let's get on with this. What now do I have to do to get our show started at Las Vegas?

INSURANCE CORRESPONDENCE:

Jul 20

Charlie Stogner <stogtv@gmail.com>

to Meleasia

Got a serious problem with Cox and insurance.

Here's what Cox 'leased access' agreement calls for in insurance:

(a) **INSURANCE.** LESSEE shall obtain and have in effect at all times during the Term, Errors and Omissions insurance, written by insurance carriers holding a Best's rating of A- or higher with limits of \$ 1,000,000 per occurrence covering liability arising from all shows provided to the LESSOR. LESSEE shall obtain individual certificates for each state within which any System listed in Exhibit B(s) is located in whole or in part. The policy shall provide for thirty (30) days' prior written notice to LESSOR of any material change, non-renewal or cancellation of coverage. Prior to execution of this Agreement and each time that a change is made in the Policy, the carrier, or Exhibit B resulting in the addition of a System necessitating an additional State certificate, LESSEE shall deliver to LESSOR a Certificate(s) of Insurance evidencing such coverage and naming each LESSOR listed on any Schedule B as an additional insured under the policy as evidence of coverage obtained per this section and shall not limit or restrict any indemnification obligation of the LESSEE under this Agreement.

Our present policy is with AXIS, the certificate of insurance (ACORD form) I got from you yesterday is with AXIS as per where it says "Other AXIS Pro Media liability". I'm assuming the current policy and this one from 2010 are the same. If so, Cox accepted the one in 2010.

Here's what Cox now says about the policy:

On Friday, July 7, 2017. Cox received from you a copy of the Film & Entertainment Liability Policy with Axis Insurance Company (the 'Policy'). which insures Charles Stogner OBA StogMedia. Both Cox and its insurance broker have reviewed the Policy

for the following reasons, among others, Cox unfortunately has determined that the Policy patently fails to comply with the reasonable insurance requirements of the Leased Access Programming Agreement (the 'Agreement') you signed:

1. Endorsement 4. FE -41, expressly amends Item 6 of the Policy and specifically states,

'The policy shall not apply to motion pictures for theatrical release, programs for radio, television or cable television or records for general distribution unless specifically named by endorsement.' (emphasis added). No such programs are specifically named in any endorsement, and the Policy therefore provides no coverage whatsoever to Cox or StogMedia with regard to the programming StogMedia committed to presenting under the Agreement. Indeed, the Policy expressly excludes such coverage.

2. The Policy fails to provide for 30 days prior written notice to Cox of any material change, non-renewal or cancellation of coverage.

3. The Policy fails to reflect that it is effective in the state of Nevada.

4. The Policy expires April 16, 2018, which is several months before the Agreement would expire.

NOW, I've been taking advantage of the law providing leased access for 20 years and not only am president of our national association but from what I hear from others am considered the leading expert on leased access, the law, FCC rules, etc.

Here's what FCC says about cable operators and leased access: *The Commission further stated that determinations of 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 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 factor.* **1. The burden of proof in establishing reasonableness was placed on cable operators.**

Is there any way I can speak to the broker, underwriter or more importantly, some AXIS official to see if they can assist me in having Cox accept, as all other cable operators, the AXIS policy?

Charlie Stogner <stogtv@gmail.com>

Jul 19

to Leased, Joiava, jennifer.hight.

Attached is a copy of an ACORD form from our files showing it was for CoxCom, Inc. OBA

Cox Communications Arkansas
901 S., Geirge /Washington Blvd
Wichita, Ks
ATTN: Sandy Sigmund

and since we used airtime at Sierra Vista, Az. with this policy, Cox must have accepted it.

You've got us in a very precarious position with taking so long to provide us the status on our leased access request for Las Vegas.

We need to know what other obstacles we've yet to satisfy to Cox to permit us to exercise the right of carriage.

We need to set starting date, discuss delivery with Cox tech and more once we sign your document. We have not choice other than meeting whatever demands you make to being airing our show.

ATTACHMENT 13 (ACORD form)

Jul 20

Jojava.Philpott@cox.com>

to me

Mr. Stogner,

Please see the attached letter which was also sent to you via certified mail.

Copy provided below

cox.

Cox Communications
6205-B Peachtree Dunwoody Rd. Atlanta, GA 30328

July 14, 2017

CERTIFIED MAIL RETURN RECEIPT REQUESTED

StogMedia
c/o Charles Stogner 5146 Beauregard Road Wesson. MS 3919 I

Re: Leased Access Programming Agreement; Las Vegas, NV

Dear Mr. Stogner:

On Friday, July 7, 2017. Cox received from you a copy of the Film & Entertainment Liability Policy with Axis Insurance Company (the "Policy"). which insures Charles Stogner DBA StogMedia. Both Cox and its insurance broker have reviewed the Policy. For the following reasons, among others, Cox unfortunately has determined that the Policy patently fails to comply with the reasonable insurance requirements of the Leased Access Programming Agreement (the "Agreement") you signed:

1. Endorsement 4. FE -41, expressly amends Item 6 of the Policy and specifically states, "The policy shall not apply to motion pictures for theatrical release, programs for radio, television or cable television or records for general distribution unless specifically named by endorsement." (emphasis added). No such programs are specifically named in any endorsement. and the Policy therefore provides no coverage whatsoever to Cox or StogMedia with regard to the programming StogMedia committed to presenting under the Agreement. Indeed, the Policy expressly excludes such coverage.

2. The Policy fails to provide for 30 days prior written notice to Cox of any material change, non-renewal or cancellation of coverage.

3. The Policy fails to reflect that it is effective in the state of Nevada.

4. The Policy expires April 16, 2018. Which is several months before the Agreement would expire.

Cox has previously and repeatedly explained to StogMedia the requirements and conditions StogMedia undertook in the Agreement it signed, and Cox will not reiterate them here yet again. In fact, Cox has made every effort to accommodate StogMedia in its stated desire to have its programming carried on Cox's Las Vegas, Nevada cable television system, which is demonstrated by the mutually accepted terms set forth in the Agreement.

Cox has previously made clear to StogMedia, however, that unless and until the prerequisites of the Agreement StogMedia signed are satisfied Cox will not carry StogMedia's programming. Cox also will not continue this discussion indefinitely. Therefore, unless Cox receives a copy of a Policy that is consistent with the Agreement together with any and all other documents and information required thereunder within the next fifteen (15) days, Cox will not countersign the Agreement pursuant to its terms, will return to StogMedia the first quarterly payment Cox previously received, will not respond further to StogMedia regarding this matter, and will consider it terminated. To the extent that carriage of StogMedia's programming does not commence in accordance with its preferred schedule or is not carried, that is due entirely to StogMedia's conduct and its failure to comply with its agreed-upon obligations.

Sincerely,

Leased Access Programming Agreement: Las Vegas, NV

Charlie Stogner <stogtv@gmail.com>

Jul 20

to Joiava

I'm trying to find a way to satisfy you with the insurance requirements Cox demands and your keep referring to 'my signing' the document. This document has been presented to me in such a way that it appears Cox will not provide us leased access carriage if we do not sign it.

Your letter was dated July 14 and only received today, July 20. Yesterday, July 19, you were sent an email attachment of a scanned oopy of the ACORD form Cox accepted for our using leased access in Arizona.

Obviously you had not seen the form that was accepted for airtime when you wrote this letter.

If we must agree to terms and conditions dictated by Cox or not get carriage then Cox need to review and provide a new list of exactly what there are we most agree to.

You are withholding permitting us carriage until we meed your demands which in itself comes close to extortion. then we need to insure we are meeting each dictate.

Hanson, Derrick (CCI-Atlanta) <Derrick.Hanson@cox.com>

Jul 21

to me, Leased

Ms. Hightower acknowledges your email correspondence dated yesterday, July 20, 2017, and she has personally reviewed your file. Ms. Hightower wishes to reiterate that StogMedia's programming may be carried on the Cox Las Vegas, Nevada cable television system consistent with terms of the Leased Access Programming Agreement you signed and of Ms. Philpott's letter to you, dated July 14, 2017. The Axis insurance policy you provided specifically excludes coverage for cable television programming, and therefore offers no protection for StogMedia's cable television programming. Please refer to Ms. Philpott's letter for details if StogMedia plans to have its programming distributed on Cox's Las Vegas cable television system.

From: Charlie Stogner [<mailto:stogtv@gmail.com>]

Sent: Thursday, July 20, 2017 2:27 PM

To: Hightower, Jennifer (CCI-Atlanta-LD) <Jennifer.Hightower@cox.com>

Subject: Worth taking note of

The following is a copy of my first communication with you regarding leased access carriage at Las Vegas that was send via email May 19.

Ms. Hightower, I'm president of the national association of leased access programmers and need to discuss how Cox apparently interprets and requires conditions in their leased access application.

I've been in media over 60 years, ranging from cub-reporter to newspaper publisher, as well as involvement in the cable industry as a programmer and association officer.

Cox seems to be writing their own rules and I believe a discussion could avoid the publicity a formal petition to FCC would create.

Can you please provide me a number and time convenient to call you?

Through the years corporate personnel, some holding the same position as you, at Comcast, Time Warner, Charter, TCI, Mediacom, Bright House and others have been courteous enough to discuss leased access matters with me. Regrettably you and Cox choose not to.

Correspondence received from Ms. Joiava Philpott, now vice president, Regulatory Affairs, comes across as arrogant and demeaning, an attitude of the 'bully in the game'. Her way of demanding Cox can dictate leased access rules is foreign to anything I've encountered in over 20 years of being a leased access programmer.

I received an letter from her today still citing the insurance as a major factor in denying us carriage yet Cox has yet to even acknowledge FCC' where is says, *The Commission further stated that determinations of 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 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 factor*[\[1\]](#) **The burden of proof in establishing reasonableness was placed on cable operators.**

In that Cox has accepted our insurance in the past (you were emailed an attachment of a scanned copy of our ACORD form accepted by Cox in 2010 yesterday. Ms. Philpott's letter was written five days earlier so apparently she had not yet seen the accepted insurance), don't you think FCC will now order Cox to fulfill the above requirement should this be brought before them in a Petition for Relief.

I'd like to go back to my request of May and the two of us have a personal discussion before this gets escalated to an FCC filing and is brought to the attention of the news media.

Can we act as professionals and have a discussion?

Charlie Stogner <stogtv@gmail.com>

Jul 24

to Derrick

We need to talk first thing this morning.

Our insurance carrier, AXIS, is correcting the policy and amending it to conform to the terms/conditions Cox insists on. They've been issuing our 'media perils' coverage for leased access for at least since 2010 as per the ACORD statement we provided Cox for Sierra Vista. At some point, somehow the policy was changed and since our insurance agent brought it to their attention that Cox was not accepting it, they immediately responded by agreeing to make the necessary policy changes to conform .

I expect to be able to provide Cox with an acceptable policy within a day or two. Meanwhile, there are topics involved in using airtime at Las Vegas that have gone ignored in the ongoing email communications.

For one thing, we've never had a site where the operator did not provide us direct communications with those involved in actually handling, inserting, our content. Please note these two messages I received from my Las Vegas affiliate over the weekend.

July 22:

I am trying to upload my spot which is scheduled for its first airing on Friday July 28. Take a look at the attached is the page that I using to upload.

1) What is the "Client Name"? Stog Media?

2) What is the "ISCI" code?

My file is 58:30 exactly in length

MOV(QuickTime) file

H.264 codec

The file size is 16.7GB

I have not tried to upload yet because I am waiting on you to answer the above two questions. The problem is that it is Exhibit C of the contract states that the maximum file size is only 2GB. That is nearly impossible for a one hour long high resolution production. Do you think I will have a problem uploading it? Also I have the required documentation (attached) for the one piece of music that I used. The license allows which allows for "TV Programming of public broadcasting". That should suffice, correct? If I not I could purchase a more expensive license but would much rather not.

I have tried to find a number at Cox to ask questions but all of their "Contact Us" links are dead.

July 23:

My number one priority is just starting on time.

I've spent a lot of money on print and billboards advertising the start date.

Please just focus on getting this on air on time. I really don't want to argue with them about anything (except for the channel guide).

We've already agreed on price and they've already cashed my check.

I'll be sending another email message shortly going over what I believe to be the latest 'agreement' proposed by Cox. However, I suggest a personal meeting between me and Cox personnel authorized to make changes in their 'adhesion contract', would help get this matter cleared for now and the future. I'd like to have this meeting at your offices in Atlanta midday tomorrow (it's a six hour drive) where we can go over, in detail, the wording of the document.

Respectfully,
Charlie Stogner

Charlie Stogner <stogtv@gmail.com>

Jul 24

to Derrick

While we are waiting for StogMedia's insurance carrier to provide the information satisfactory to Cox, we need to be taking a serious look at how Cox needs to revise the 'agreement' (adhesion contract).

From any perspective and all appearances Cox' position on leased access, especially their own self-constructed 'application' , their instructions, and proposed agreement has been arrogant, belligerent, and more in a manner of saying 'do it our way or we will not permit carriage'.

It's nearly impossible not to resent the tenor of Joiavia Philpott's written communications and her ignoring specific issues pointed out in the Cox document while continuing to insist on the lessee meeting those terms and conditions seemingly created by Cox, not consistent with FCC materials they appear to contradict not to mention Jennifer Hightower's refusal to

In the opening paragraph, the Cox document states, "to cablecast the video programming described in Exhibit A (the Programming) yet refuses to adhere to the FCC programming category of 'other' which is described as

By restricting the program as they have in Exhibit A, they are dictating editorial content and depriving StogMedia of the full value of the 'genuine outlet' prescribed for leased access.

In Item 1, Cox admits to the document allowing for changes in Exhibit B.

Item 2, TERM is requested to run one year from date of start and is not to be misconstrued to be an 'airtime order' but rather agreement that StogMedia can during this period of time place orders as per Exhibit B. The initial Exhibit order being for a 13 week period beginning with the 'start' date.

Item 3, CHANNEL USE, (a) Control over programming can be misleading lest it be understood that StogMedia's Las Vegas affiliate, Jon Basso, is in full control of the programming on behalf of StogMedia.

Item 3, (b) is understood and agreed to.

Item 5, FEES and PAYMENTS: is agreed to with Cox understanding "Exhibit C" is to reflect a prepaid three (3) month (13 week) order.

Item 6: Our insurance carrier is correcting the policy to provide Cox with their demands.

However, it needs to be pointed out that while Philpott appears to completely disregard FCC where we find it says, *The Commission further stated that determinations of 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 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 factor **The burden of proof in establishing reasonableness was placed on cable operators.**

Item 19, COVENT NOT TO ASSIGN: It needs to be understood that while StogMedia DOES NOT assign the agreement to any third party, our Las Vegas operation is managed by our affiliate, fully authorized to act on behalf of StogMedia in setting schedules, seeing that programming is delivered and in locally paying airtime billing among other duties.

Item 20, CHANGE OF PROGRAMMING: Entire content needs to be changed to reflect FCC's description of the type programming that is considered 'leased access' as per mentioned in the opening paragraph.

Item 23: CONSTRUCITON: This document appears to be constructed as to require consulting an attorney to insure the 'leasee's' interests are not violated. This needs to be rewritten in 'lay', not legal terms so as to be easily understood by non-lawyers.

EXHIBIT 'A': Description of programming needs to read: ***Content will be in FCC category 3 "other", "local programming on a variety of topics of general interest ranging from sports to***

medicine, to programming similar to that now sold as 'long form' by cable ad insert sales organizations", as per FCC, 47 U.S.C. § 602 (20). Video programming is defined as "programming provided by, or generally considered comparable to programming provided by, a television broadcast station."

EXHIBIT "B": Initial cable cast to be set by Cox at soonest possible time following acceptance of the

Exhibit 'C': Cox has acknowledged they've received and deposited the \$11,398.56 deposit.

Exhibit 'D': is attached to this email.

Regarding a new 'start' date to coincide with Cox having an agreement (or, adhesion contract) acceptable to them, it appears we need to Wednesday, prior to airing. Does this mean Wednesday for a airtime beginning the following Monday or what?

On a technical note, the site is the first ever where the cable operator has not readily and willingly allowed our affiliates to talk direct with them regarding uploading. It's noted there is a 2GB maximum file size and our production manager needs to discuss and understand how to have our one hour (58:30 min) show fit in that.

I really believe it is in our mutual interest for someone at Cox with the authority to act on this matter talk with me directly, Can this be you? Will you at least please acknowledge my correspondence and request to talk?

Leased Access

Jul 25

Response <LeasedAccessResponse@cox.com>

to me

Mr. Stogner, your numerous messages over the past several days have been received. Once we receive a copy of the updated insurance policy we'll review and if it meets the terms of the agreement we'll move forward with executing the agreement, providing a market contact and scheduling the programming.

Charlie Stogner <stogtv@gmail.com>

Jul 25

to Leased

Okay, I understand my company is rushing to meet Cox' demands. Meanwhile what are the possibilities Cox in return will comply with FCC's position that the operator must provide evidence (we've provided the exact wording) for them requiring the coverage.

For your future reference, StogMedia being a company that grew out of the newspaper industry has always carried 'Media Perils' as a type policy we feel essential to airing a variety of type content from 'talk TV' to news, sports and other type content normally associated with local broadcast TV.

There are a number of matters in the Cox contract that need addressing, that are in conflict with what FCC has said is permissible and there is a need for someone to actually talk with me by phone as we go over what and why.

I believe FCC thinks these are 'negotiated agreements' but so far they appear to be more of 'adhesion contracts' dictated by Cox.

Can someone please follow up on the overall document while we wait for the insurance paperwork?

INSURANCE CORRESPONDENCE

Meleasia Shaw <mshaw@stogneragency.com>

Jul 24

to me

Please see the underwriter's response below...

From: Augusta Kelley [mailto:Augusta.Kelley@amwins.com]

Sent: Monday, July 24, 2017 10:49 AM

To: Meleasia Shaw

Subject: RE: STOGMEDIA - MCN000108521701

Importance: High

Good morning,

Please see the below / attached from the UW:

Hi Jenny, see below:

1. I immediately see the problem they have with the first issued listed on your email below. The Scheduled Production” wording is incorrect on this past renewal, for which I apologize. We left off the second part of that scheduled wording. It should read as follows:
“See FE-41, Producers of Commercials, Industrial and Educational Films Amendatory Endorsement and community programming for cable television produced by the named Insured during the policy period.”
2. The next issue is the 30 days prior written notice – that enhancement is provided when we issue the additional insured endorsement (it is a fill in – see blank endorsement above). This wording is not on the policy, as we do not provide the notification on a blanket basis to those qualifying as an Insured under the Definition of Insured. That enhancement is provided on the AI endorsement. This year we have not issued any additional insured endorsements. Please advise Cox’s full entity listing and address and I will have the AI endorsement issued for Cox. That should take care of this issue.
3. As far as being effective in the state of Nevada – this territory of this policy is universal. I would direct Cox to page 8 of 11, Section V. CONDITIONS, B. That section states: The territory of the policy is universal (which would include Nevada).
4. Policy expiration is 4/16/2018 – I can’t help that it does not jive with the Cox agreement – we renewed per your instructions and this policy, as far as I can tell, has had the same expiration

date for the last 6yrs at least (I don't have info past 5yrs). If you want to forward the contract with Cox, I can take a look and see what date Cox is referring to on the contract. The Insured has had continuous coverage since first written, so there have been no gaps in coverage since originally bound. Once I see their language, then I can advise further.

Let me send you the changes (change of Scheduled Production wording and the additional insured endorsement for Cox (again will need info above to generate the endorsement). Then I'll take a look at the contract and figure out what we can do on the expiration date issue.

I think I have addressed all the issues as presented. I left you a voice mail, but when I took another look at your email below, it was not that complicated. These are simple issues that are easily remedied. I think this will satisfy Cox (pending further information on why they think the policy suddenly does not expire within their requirements), with the explanation above, the revised "Scheduled Production" wording and an AI Endorsement for Cox that contains the 30 day provision.

If you have any questions or just want to discuss in general, please do not hesitate to contact me.

I do want to apologize for the missing line on the dec page, that was my fault.

Thank you,
Augusta Kelley, MLIS

From: Meleasia Shaw
Sent: Monday, July 24, 2017 11:45:03 AM (UTC-05:00) Eastern Time (US & Canada)
To: Jenny Driskell
Subject: RE: STOGMEDIA - MCN000108521701

Jenny,

Have you heard anything on this yet? He is calling this morning for an update...

Thank you,

Meleasia Shaw

From: Jenny Driskell [<mailto:Jenny.Driskell@amwins.com>]
Sent: Friday, July 21, 2017 10:02 AM
To: Meleasia Shaw
Subject: RE: STOGMEDIA - MCN000108521701

Let me get this to the underwriter right away and see if we can clear this up for the insured. Be back in touch shortly.

Thanks,
Jenny Driskell, MLIS

From: Meleasia Shaw [<mailto:mshaw@stogneragency.com>]
Sent: Friday, July 21, 2017 10:57 AM
To: Jenny Driskell
Subject: STOGMEDIA - MCN000108521701

Jenny,

Please see the insured's email below....

It appears he is having a problem satisfying Cox Communication. Can you let me know if there is an endorsement we need to do to make them happy and let me know.....

Thank you,
Meleasia Shaw

From: Charlie Stogner [<mailto:stogtv@gmail.com>]
Sent: Thursday, July 20, 2017 2:04 PM
To: Meleasia Shaw/The Stogner Agency
Subject: URGENT matter

Got a serious problem with Cox and insurance.

Here's what Cox 'leased access' agreement calls for in insurance:

(a) **INSURANCE.** LESSEE shall obtain and have in effect at all times during the Term, Errors and Omissions insurance, written by insurance carriers holding a Best's rating of A- or higher with limits of \$ 1,000,000 per occurrence covering liability arising from all shows provided to the LESSOR. LESSEE shall obtain individual certificates for each state within which any System listed in Exhibit B(s) is located in whole or in part. The policy shall provide for thirty (30) days' prior written notice to LESSOR of any material change, non-renewal or cancellation of coverage. Prior to execution of this Agreement and each time that a change is made in the Policy, the carrier, or Exhibit B resulting in the addition of a System necessitating an additional State certificate, LESSEE shall deliver to LESSOR a Certificate(s) of Insurance evidencing such coverage and naming each LESSOR listed on any Schedule B as an additional insured under the policy as evidence of coverage obtained per this section and shall not limit or restrict any indemnification obligation of the LESSEE under this Agreement.

Our present policy is with AXIS, the certificate of insurance (ACORD form) I got from you yesterday is with AXIS as per where it says "Other AXIS Pro Media liability". I'm assuming the current policy and this one from 2010 are the same. If so, Cox accepted the one in 2010.

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I. Endorsement 4. FE -41 , expressly amends Item 6 of the Policy and specifically states,

'The policy shall not apply to motion pictures for theatrical release, programs for radio, television or cable television or records for general distribution unless specifically named by endorsement.' (emphasis added). No such programs are specifically named in any endorsement. and the Policy therefore provides no coverage whatsoever to Cox or StogMedia with regard to the programming StogMedia committed to presenting under the Agreement. Indeed. the Policy expressly excludes such coverage.

7 The Policy fails to provide for 30 days prior written notice to Cox of any material change. non-renewal or cancellation of coverage.

3 The Policy fails to reflect that it is effective in the state of Nevada.

4:

The Policy expires April 16. 2018. which is several months before the Agreement would expire.

NOW, I've been taking advantage of the law providing leased access for 20 years and not only am president of our national association but from what I hear from others am considered the leading expert on leased access, the law, FCC rules, etc.

Here's what FCC says about cable operators and leased access: *The Commission further stated that determinations of 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 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 factor.* **The burden of proof in establishing reasonableness was placed on cable operators.**

Is there any way I can speak to the broker, underwriter or more importantly, some AXIS official to see if they can assist me in having Cox accept, as all other cable operators, the AXIS policy?

Charlie Stogner <stogtv@gmail.com>

Jul 25

to Leased, Joiava, Derrick

Let's see if we can't clear up some of the language in the paperwork for StogMedia being granted carriage of leased access programming at Las Vegas.

In the opening paragraph, it says *to cablecast the video programming described in Exhibit A (the "Programming")*. This subject will be discussed later when we get to Exhibit A./

Item 1 says . *LESSOR grants to LESSEE the right to utilize the cable television channel (the "Channel") on the System(s) as designated in an Exhibit B on the date and at the times set forth in the applicable Exhibit B (the "Leased Time")*. This obviously needs to be the soonest available time for the initial cablecast, same time, same subsequent cablecasts.

Item 2, The 'Term' needs to begin with the start date and expire at the end of three months *13 weeks), making this a three month 'agreement',

EXHIBIT 'A'; Description of Programming need needs to be:

"Other-- Video programming is defined as "programming provided by, or generally considered comparable to programming provided by, a television broadcast station.",

Categories. types of

Programming

76.970, 47 CFR Ch. 1 (10-1- 94 edition)

Item (f)...there are three program categories.

1. Programming for which a per-event or per channel charge is made;
2. Programming more than fifty percent of the capacity of which is used to sell products directly to consumers;

and

3.

All **other** programming. (Described by FCC as the type normally found in local TV)

EXHIBIT 'B', dates and times:

Initial cablecast of Programming

Needs to be the soonest date our show can begin airing; same time and same subsequent cablecasts for a period of three months (13 weeks).

EXHIBIT 'C', Rates,

This needs to correspond with the use of Channel 48 for the times and period as set forth on exhibit B. Payment has already been made.

EXHIBIT 'D', Music used.....

A copy of our music rights is attached.

There may be other areas that need to be changed to reflect this new start date and schedule. If there are any, I'd appreciate their being brought to my attention.

Now, maybe finally we can get an 'agreement' close to what FCC believes these to be.

ATTACHMENT 14 (Music rights)

Charlie Stogner <stogtv@gmail.com>

Jul 24

to Derrick

The following is what we just received regarding our Media Perils insurance.

I'm informed that whatever endorsements, etc. are necessary to satisfy Cox will be, is being, done. We'll provide copy as soon as available.

Re anniversary date, I'm amazed Philpott finds the date not consistent with the 'agreement' but then it isn't with any of the more than 15 sites we now air on. The insurance stays in effect and we provide operators with the updated form each year.

Now, please let me know if I'm getting through to anyone.

Here's what we got on policy:

1. I immediately see the problem they have with the first issued listed on your email below. The "Scheduled Production" wording is incorrect on this past renewal, for which I apologize. We left off the second part of that scheduled wording. It should read as follows:

"See FE-41, Producers of Commercials, Industrial and Educational Films Amendatory Endorsement and community programming for cable television produced by the named Insured during the policy period."

2. The next issue is the 30 days prior written notice – that enhancement is provided when we issue the additional insured endorsement (it is a fill in – see blank endorsement above). This wording is not on the policy, as we do not provide the notification on a blanket basis to those qualifying as an Insured under the Definition of Insured. That enhancement is provided on the AI endorsement. This year we have not issued any additional insured endorsements. Please advise Cox's full entity listing and address and I will have the AI endorsement issued for Cox. That should take care of this issue.

3. As far as being effective in the state of Nevada – this territory of this policy is universal. I would direct Cox to page 8 of 11, Section V. CONDITIONS, B. That section states: The territory of the policy is universal (which would include Nevada).

4. Policy expiration is 4/16/2018 – I can't help that it does not jive with the Cox agreement – we renewed per your instructions and this policy, as far as I can tell, has had the same expiration date for the last 6 yrs at least (I don't have info past 5 yrs). If you want to forward the contract with Cox, I can take a look and see what date Cox is referring to on the contract. The Insured has had continuous coverage since first written, so there have been no gaps in coverage since originally bound. Once I see their language, then I can advise further.

Let me send you the changes (change of Scheduled Production wording and the additional insured endorsement for Cox (again will need info above to generate the endorsement)). Then I'll take a look at the contract and figure out what we can do on the expiration date issue.

I think I have addressed all the issues as presented. I left you a voice mail, but when I took another look at your email below, it was not that complicated. These are simple issues that are easily remedied. I think this will satisfy Cox (pending further information on why they think the policy suddenly does not expire within their requirements), with the explanation above, the revised "Scheduled Production" wording and an AI Endorsement for Cox that contains the 30 day provision.

If you have any questions or just want to discuss in general, please do not hesitate to contact me.

I do want to apologize for the missing line on the dec page, that was my fault.

Thank you,
Augusta Kelley, MLIS

Charlie Stogner <stogtv@gmail.com>

Jul 25

to Leased

Of course the need to send messages could be lessened should we ever get to where we can discuss this is person, but since that may never happen, here's yet another serious matter that needs addressing.

My Las Vegas affiliate just spoke to someone at SpotXpress but was told he needed to talk with a Cox account rep. Of course there is no such position in leased access but the problem exists, how does my client upload? Who can he talk with?

Noting the quality of content on Channel 48 is SD only for 'long form' as in Exhibit C, item 3, of the 'agreement' it is assumed the same applies to any 'leased access' on the channel. Of course being less quality than the programming on other channels this is not the 'genuine outlet' prescribed by Congress. Any chance leased access will be moved to an HD channel. Meanwhile back to our immediate problem. Is there any individual our affiliate can speak with about uploading?

Is it possible someone is composing an updated airtime document?

Charlie Stogner <stogtv@gmail.com>

Jul 26

to Leased, Joiava, Derrick

Will you please at least let me know what is now holding up this project?

Is the insurance information adequate or do you require more?

Is there some other condition we must meet to get you to provide us carriage?

It's hard to have communications when one party is slow responding.

Charlie Stogner <stogtv@gmail.com>

Jul 25

to Leased, Joiava, jennifer.hight., Derrick

Here's copies of the endorsements from our insurance carrier. Please advise if this will suffice or do we need to provide additional material.

If such is needed, it may help matters if Cox will provide us a copy of an ACORD form they've accepted from some other leased access programmer.

ATTACHMENT 15 (2)

Leased Access

Jul 26

Response <LeasedAccessResponse@cox.com>

to me

Cox received your July 24, 2017 message and additional endorsements (namely, Endorsement 6 and Endorsement 7A) to your Film & Entertainment Liability Policy with

Axis Insurance Company (the “Policy”), which insures “Charles Stogner DBA StogMedia.”

Cox agrees that Endorsement 7A, FE-03 — designating Cox Communications Las Vegas, Inc. *et al.* as Additional Insureds and providing Cox with thirty (30) days advance written notice of cancelation, non-renewal, or material changes to the Policy — also addresses Cox’s concerns regarding renewal and expiration of the Policy. We simply observe that upon renewal of the Policy, a new certificate of insurance may be required under Section 6(a) of the Leased Access Programming Agreement (the “Agreement”) you signed.

Cox also agrees that Section V.B. of the Policy — designating the territory as universal — adequately addresses the requirements of Section 6(a) of the Agreement notwithstanding the obligation therein to “obtain individual certificates for each state.”

However, Endorsement 6, FE-45, and Sections IV.A.21 and IV.A.22 of the Policy raise several issues that will need to be resolved prior to carriage of the Programming under the Agreement:

1. Endorsement 6 amends Item 6., **Scheduled Production(s)**, of the Declarations to include “community programming or cable television *produced by the “Named Insured.”* (Emphasis added.) Inasmuch as the Policy purports to cover only programming *produced by StogMedia*, which is not apparent based on correspondence Cox has received from Mr. Jon Basso, please verify in writing that (i) StogMedia is or will be the *producer* of each episode of the Programming that will be transmitted pursuant to the Agreement; and (ii) StogMedia has agreed to provide the insurance afforded by the Policy to Jon Basso (a/k/a Dr. Jon) as an agent or independent contractor pursuant to Section II.L. of the Policy and the “affidavit” StogMedia provided to Cox, dated June 29, 2017.
2. Section IV.A.21 of the Policy explicitly excludes from coverage “infringement or other **Claims** arising from the title of any **Scheduled Production(s)** until a satisfactory title report is submitted and approved by the Company and specifically endorsed hereon.” Please verify in writing, or have your insurance company verify in writing, that each episode of the Programming that will be transmitted pursuant to the Agreement is covered for title infringement under the Policy. Verification should be in the form of a certificate of insurance together with a copy of the Policy Endorsement or an email from the insurer confirming that StogMedia has submitted a satisfactory title report that the insurer has approved and specifically endorsed on the Policy.
3. Section IV.A.22 of the Policy explicitly excludes “infringement or other **Claims** arising from the music contained in any **Scheduled Production(s)** until all releases, licenses, consents and other rights have been obtained and written confirmation of such is submitted to and approved by the Company and the Company issues an endorsement deleting or modifying this exclusion.” Please verify in writing, or have your insurance company verify in writing, that each episode of the Programming that will be transmitted pursuant to the Agreement is covered for all music and all associated rights under the Policy. Verification should be in the form of a certificate of insurance together with a

copy of the Policy Endorsement or an email from the insurer confirming that StogMedia has submitted written confirmation to the insurer of all releases, licenses, consents and other rights for music contained in the Programming, which the insurer has approved and for which the insurer has issued an endorsement deleting or modifying Section IV.A.22 of the Policy.

- a. Cox reminds StogMedia that Section 8 of the Agreement obligates StogMedia to secure all necessary copyright and performance clearances, and that StogMedia represented and warranted that it had already obtained such authorizations, licenses, and clearances under Section 9 of the Agreement. Inasmuch as StogMedia has repeatedly refused to provide Cox with any of the requested “copyrights, permits, licenses, and clearances necessary for the proposed service,” or any evidence of StogMedia’s financial qualifications, and inasmuch as liability for infringement is explicitly excluded from coverage under the Policy, requiring an endorsement deleting or modifying Section IV.A.22 of the Policy is entirely reasonable.

Upon receipt of the documentation outlined above, Cox will execute the Agreement and commence carriage of the Programming consistent with the Agreement’s requirements. Cox reiterates, however, that to the extent that carriage of StogMedia’s Programming does not commence in accordance with its preferred schedule or is not carried, that is due entirely to StogMedia’s conduct and its failure to comply with its agreed-upon obligations.

MORE COX PROBLEM..INSURANCE

Charlie Stogner <stogtv@gmail.com>

Aug 2

to Meleasia

Here's what I got this morning.

As Cox has explained in multiple correspondence with you, the documentation you have provided regarding the insurance required under the Agreement that you executed, as well as your correspondence and the correspondence from Jon Basso regarding his role in the production, control and ownership of the programming proposed to be retransmitted over Cox’s Las Vegas cable system, raise important insurance coverage issues that you unfortunately continue to gloss over either willfully or perhaps due to confusion. Contrary to Jon Basso’s statements to Cox, you vigorously assert in your email to Cox dated July 27, 2017, that Jon Basso and other unnamed individuals who may play a role in creating and producing the content for the programming proposed to be retransmitted over Cox’s Las Vegas cable system are in fact your agents under your control and direction for purposes of your Agreement with Cox.

As explained in more detail in Cox’s correspondence to you dated July 26, 2017, the information StogMedia has provided to date concerning its insurance coverage, including Section II.L.6 and Endorsement 8 of your Axis policy, does not reflect insurance coverage for StogMedia’s agents and independent contractors.

As previously noted in Cox's July 26 correspondence to you, Section IV.A.21 of the Axis policy excludes from coverage "infringements or other Claims arising from the title of any Scheduled Production(s) until a satisfactory title report is submitted and approved by the Company and specifically endorsed hereon." Your correspondence to Cox dated Friday, July 28, 2017, forwarding comments from Ms. Kristie Kobler, reflects that your insurance company still is contemplating whether to modify or delete the Exclusion in Section IV.A.21 of the policy, which leaves the matter unresolved.

In Ms. Philpott's correspondence to you delivered via email on July 20, 2017 and certified mail on July 21, 2017, StogMedia was given a 15-day window to resolve the outstanding issues and problems with your application and insurance coverage. Please be advised that the time is running out before Cox will consider this matter terminated.

Although I can't find a copy of any such email message from you (insurance re 'title'), I thought I saw where they said naming the title in the policy would be okay with them, can you see if they can/will satisfy this most recent and I hope final demand?

It has past being urgent and I'd appreciate you calling Kristie and seeing if this can be done ...today hopefully?

Charlie Stogner <stogtv@gmail.com>

Aug 2

to Leased

We are trying to meet all the demands of Cox and I'm comfortable they can fix this most recent one.

However, can you please explain to me how Cox' demands regarding the editorial content are not in conflict with **47 U.S. Code § 532 - Cable channels for commercial use** where it states: *A cable operator shall not exercise any editorial control over any video programming provided pursuant to this section, or in any other way consider the content of such programming, except that a cable operator may refuse to transmit any leased access program or portion of a leased access program which contains obscenity, indecency, or nudity and may consider such content to the minimum extent necessary to establish a reasonable price for the commercial use of designated channel capacity by an unaffiliated person.*

Please bear in mind that regardless whether or not your requirements may be considered some form of 'exercising control over editorial content', it is StogMedia's intent and desire to satisfy any and all conditions you are placing in the agreement.

Hopefully as soon as we can get verification from our insurance that they will meet this final requirement (hopefully final) you can clear the way for us to begin using the

channel.

MORE RE INSURANCE

From: augusta.kelley@amwins.com [mailto:augusta.kelley@amwins.com]
Sent: Tuesday, August 1, 2017 2:37 PM
To: mshaw@stogneragency.com
Subject: RE: FW: FW: RE: More than urgent

Hi Meleasia,

In that case, we can offer title coverage, as the owner of the grill, per below, has indemnified Stogmedia for any claims arising out of the content/matter/intellectual property/branding etc. the owner of the grill has granted to Stogmedia.

We will get that title endorsement issued for "Heart Attack Grill", effective inception.

I think that takes care of Cox's concerns. If not, please let me know and we will continue to work on this,

Thank you,
Augusta Kelley, MLIS

From: 'MeleasiaShaw' <mshaw@stogneragency.com>
Sent: Tuesday, August 01, 2017 12:47 PM
To: 'AugustaKelley' <Augusta.Kelley@amwins.com>
Subject: FW: FW: RE: More than urgent
Augusta,

Here is some more information on StogMedia. He has another question.....

Thank you,

Meleasia Shaw
The Stogner Agency
625 Delaware Ave - McComb, MS 39649
601-684-4467 Phone - 601-684-4449 Fax

From: Charlie Stogner [mailto:stogtv@gmail.com]
Sent: Monday, July 31, 2017 3:57 PM
To: Meleasia Shaw
Subject: Re: FW: RE: More than urgent

Please advise this show is produced by the owner of Heart Attack Grill is not a real 'direct sales' video but will promote his operations.

He owns all rights and off course has granted us rights of re-transmission. Please let them know he's working with StogMedia and it's all 'in-house'.

This doesn't present a problem does it?

Charlie

On Mon, Jul 31, 2017 at 3:51 PM, Meleasia Shaw <mshaw@stogneragency.com> wrote:

Please see the underwriter's response below.....

Thank you,

Meleasia Shaw

From: augusta.kelley@amwins.com [mailto:augusta.kelley@amwins.com]

Sent: Monday, July 31, 2017 3:28 PM

To: mshaw@stogneragency.com

Subject: RE: RE: More than urgent

Hi Meleasia,

Does this infomercial have anything to do with the "Heart Attack Grill" restaurant chain?

Also when you mean humorous, is this not a real product that is being sold? If it is a real product, is Stog obtaining a full indemnity from the owners of the product, for any claims arising out of the use of this product by the consumer?

Please advise and thanks,

Augusta Kelley, MLIS

From: 'MeleasiaShaw'<mshaw@stogneragency.com>

Sent: Friday, July 28, 2017 4:05 PM

To: 'KristieKobler'<Kristie.Kobler@amwins.com>

Subject: RE: More than urgent

The name of the show, the 'title' is "The Heart Attack Grill Diet, an infomercial' type show which urges viewers to adopt our high fat meat based diet. The infomercial is comprised of testimonials from various people and a few celebrities. It is humorous in nature.

This will be the only show (title) running at this site

Thank you,

Meleasia Shaw

From: Kristie Kobler [<mailto:Kristie.Kobler@amwins.com>]
Sent: Friday, July 28, 2017 12:26 PM
To: mshaw@stogneragency.com
Cc: Kristie Kobler
Subject: FW: More than urgent

Hi Meleasia,

We just received the response from the carrier. Please see below and advise:

Music endorsement is included on your policy – it is Endorsement #3.

As far as title coverage – can you give me some examples of the titles that will be used. Normally we do require a title clearance report to clear coverage for a title. But let's see what these titles look like and maybe I will be able to provide coverage without a report.

Let me know and thanks,

Best regards,

Kristie Kobler, MLIS
Jenny T. Driskell, MLIS

From: Meleasia Shaw [<mailto:mshaw@stogneragency.com>]
Sent: Friday, July 28, 2017 12:10 PM
To: Jenny Driskell
Subject: FW: More than urgent

Jenny,

I sent this to Augusta but she is out. The insured would like for an underwriter to look at the response he received from Cox below and see if there's anything we can do to rectify this situation. He has called twice already this morning...please help!

Thank you,

Meleasia Shaw

From: Charlie Stogner [<mailto:stogtv@gmail.com>]
Sent: Wednesday, July 26, 2017 9:46 PM
To: Meleasia Shaw/The Stogner Agency
Subject: More than urgent

Please forward this 'as is' to our insurance and ask they act ASAP.

I'm guessing my remarks to their correspondence can be helpful with the carrier or underwriter satisfying Cox. While it is more than likely FCC would rule they've gone far beyond what they're permitted to do, it would take months to get an FCC order and meanwhile we would not be airing shows.

here goes:

This needs to be shared with our insurance company but there needs to be the understanding they are trying to dictate matters regarding editorial content.

Let's see if we can address this as if we were in a oral discussion with my remarks being in bold, blue face, italic type.

Cox received your July 24, 2017 message and additional endorsements (namely, Endorsement 6 and Endorsement 7A) to your Film & Entertainment Liability Policy with Axis Insurance Company (the "Policy"), which insures "Charles Stogner DBA StogMedia." ***Okay, got that.***

Cox agrees that Endorsement 7A, FE-03 — designating Cox Communications Las Vegas, Inc. *et al.* as Additional Insureds and providing Cox with thirty (30) days advance written notice of cancelation, non-renewal, or material changes to the Policy — also addresses Cox's concerns regarding renewal and expiration of the Policy. We simply observe that upon renewal of the Policy, a new certificate of insurance may be required under Section 6(a) of the Leased Access Programming Agreement (the "Agreement") you signed. ***Of course each renewal we provide the cable sites where we have programming with the new certificate.***

Cox also agrees that Section V.B. of the Policy — designating the territory as universal — adequately addresses the requirements of Section 6(a) of the Agreement notwithstanding the obligation therein to "obtain individual certificates for each state." ***Whew, thank goodness.***

However, Endorsement 6, FE-45, and Sections IV.A.21 and IV.A.22 of the Policy raise several issues that will need to be resolved prior to carriage of the Programming under the Agreement:

1. Endorsement 6 amends Item 6., **Scheduled Production(s)**, of the Declarations to include "community programming or cable television *produced by the "Named Insured."* (Emphasis added.) Inasmuch as the Policy purports to cover only programming *produced by StogMedia*, which is not apparent based on correspondence Cox has received from Mr. Jon Basso, please verify in writing that
 - (i) StogMedia is or will be the *producer* of each episode of the Programming that will transmitted pursuant to the Agreement; and
 - (ii) StogMedia has agreed to provide the insurance afforded by the Policy to Jon Basso (a/k/a Dr. Jon) as an agent or independent contractor pursuant to Section II.L. of the Policy and the "affidavit" StogMedia provided to Cox, dated June 29, 2017. ***Regardless of any communication received from our authorized affiliate Jon Basso, the fact remains anything he does or has someone do in connection with producing content is done as a StogMedia project. Anything being***

cablecast has StogMedia as the producer.

2. Section IV.A.21 of the Policy explicitly excludes from coverage “infringement or other **Claims** arising from the title of any **Scheduled Production(s)** until a satisfactory title report is submitted and approved by the Company and specifically endorsed hereon.” Please verify in writing, or have your insurance company verify in writing, that each episode of the Programming that will be transmitted pursuant to the Agreement is covered for title infringement under the Policy. Verification should be in the form of a certificate of insurance together with a copy of the Policy Endorsement or an email from the insurer confirming that StogMedia has submitted a satisfactory title report that the insurer has approved and specifically endorsed on the Policy. ***What do you want here? Are you saying any show different from any other show will require a new certificate. Should we switch to a news format, how do you propose this be done?***

3. Section IV.A.22 of the Policy explicitly excludes “infringement or other **Claims** arising from the music contained in any **Scheduled Production(s)** until all releases, licenses, consents and other rights have been obtained and written confirmation of such is submitted to and approved by the Company and the Company issues an endorsement deleting or modifying this exclusion.” Please verify in writing, or have your insurance company verify in writing, that each episode of the Programming that will be transmitted pursuant to the Agreement is covered for all music and all associated rights under the Policy. Verification should be in the form of a certificate of insurance together with a copy of the Policy Endorsement or an email from the insurer confirming that StogMedia has submitted written confirmation to the insurer of all releases, licenses, consents and other rights for music contained in the Programming, which the insurer has approved and for which the insurer has issued an endorsement deleting or modifying Section IV.A.22 of the Policy. ***Again, please re-read the material we’ve provided for your ‘description of programming’ where it states:*** 76.970, 47 CFR Ch. 1 (10-1- 94 edition)

Item (f)...there are three program categories.

1. Programming for which a per-event or per channel charge is a charge is made.
2. Programming more than fifty percent of the capacity of which is used to sell products directly to consumers; and
3. All other programming. (Described by FCC as the type normally found in local TV)

a. Cox reminds StogMedia that Section 8 of the Agreement obligates StogMedia to secure all necessary copyright and performance clearances, and that StogMedia represented and warranted that it had already obtained such authorizations, licenses, and clearances under Section 9 of the Agreement. Inasmuch as StogMedia has repeatedly refused to provide Cox with any of the requested “copyrights, permits, licenses, and clearances necessary for the proposed service,” or any

evidence of StogMedia's financial qualifications, and inasmuch as liability for infringement is explicitly excluded from coverage under the Policy, requiring an endorsement deleting or modifying Section IV.A.22 of the Policy is entirely reasonable. ***While Section 8 of your document, purported to be 'an agreement', obligates us to secure..etc. Please understand this is an attempt to dictate or 'control' editorial content, something expressly prohibited by law as found at 47 U.S. Code § 532. c) Use of channel capacity by unaffiliated persons; editorial control; restriction on service; rules on rates, terms, and conditions; (2) A cable operator shall not exercise any editorial control over any video programming provided pursuant to this section, or in any other way consider the content of such programming, except that a cable operator may refuse to transmit any leased access program or portion of a leased access program which contains obscenity, indecency, or nudity and may consider such content to the minimum extent necessary to establish a reasonable price for the commercial use of designated channel capacity by an unaffiliated person.***

Upon receipt of the documentation outlined above, Cox will execute the Agreement and commence carriage of the Programming consistent with the Agreement's requirements. Cox reiterates, however, that to the extent that carriage of StogMedia's Programming does not commence in accordance with its preferred schedule or is not carried, that is due entirely to StogMedia's conduct and its failure to comply with its agreed-upon obligations.

This is being transmitted to our insurance company to enable them to see exactly what Cox now demands and to see if they can satisfy you in spite of all of this being an effort to dictate editorial matters..

In future correspondence how about dropping some of the legal jargon and put the statements in 'lay' language.

INSURANCE CORRESPONDENCE AGAIN...

Charlie Stogner <stogtv@gmail.com>

Aug 2

Meleasia
what is the 2nd issue?

As Cox has explained in multiple correspondence with you, the documentation you have provided regarding the insurance required under the Agreement that you executed, as well as your correspondence and the correspondence from Jon Basso regarding his role in the production, control and ownership of the programming proposed to be retransmitted over Cox's Las Vegas cable system, raise important insurance coverage issues that you unfortunately continue to gloss over either willfully or perhaps due to confusion. Contrary to Jon Basso's statements to Cox, you

vigorously assert in your email to Cox dated July 27, 2017, that Jon Basso and other unnamed individuals who may play a role in creating and producing the content for the programming proposed to be retransmitted over Cox's Las Vegas cable system are in fact your agents under your control and direction for purposes of your Agreement with Cox.

As explained in more detail in Cox's correspondence to you dated July 26, 2017, the information StogMedia has provided to date concerning its insurance coverage, including Section II.L.6 and Endorsement 8 of your Axis policy, does not reflect insurance coverage for StogMedia's agents and independent contractors.

As previously noted in Cox's July 26 correspondence to you, Section IV.A.21 of the Axis policy excludes from coverage "infringements or other Claims arising from the title of any Scheduled Production(s) until a satisfactory title report is submitted and approved by the Company and specifically endorsed hereon." Your correspondence to Cox dated Friday, July 28, 2017, forwarding comments from Ms. Kristie Kobler, reflects that your insurance company still is contemplating whether to modify or delete the Exclusion in Section IV.A.21 of the policy, which leaves the matter unresolved.

In Ms. Philpott's correspondence to you delivered via email on July 20, 2017 and certified mail on July 21, 2017, StogMedia was given a 15-day window to resolve the outstanding issues and problems with your application and insurance coverage. Please be advised that the time is running out before Cox will consider this matter terminated.

Charlie Stogner <stogtv@gmail.com>

Aug 2

to Leased

Please see attachment.

We placed this request the morning and immediately got a response. Any chance Cox can do likewise this morning?

ATTACHMENT 16

Leased Access

Aug 2

Response <LeasedAccessResponse@cox.com>

to Dr, me

Cox assumes that the intent of the Endorsement No. 8 to StogMedia's Axis insurance policy is to exclude the Scheduled Productions from the Policy's Exclusion A.21, not the Heart Attack Grill restaurant. If this assumption is correct, please have your insurance carrier revise Endorsement No. 8 to include the following language:

"It is agreed Part IV., EXCLUSIONS, A.21. of the policy is deleted with respect to the Scheduled Productions (currently titled "The Heart Attack Grill Diet") that will take place on a daily basis in or around a Las Vegas, NV restaurant known as the Heart

Attack Grill and that will be retransmitted over the cable system of Cox Communications Las Vegas, Inc. ("Cox") pursuant to a Leased Access Programming Agreement between Cox and StogMedia.

Please advise ASAP as to the status of the insurance coverage for StogMedia's agents and independent contractors that will be involved with the Scheduled Productions, as explained in Cox's earlier correspondence.

Charlie Stogner <stogtv@gmail.com>

Jul 28

to Leased, Joiava, Derrick

This is what we received from Insurance

*Music endorsement is included on your policy – it is Endorsement #3.
As far as title coverage – can you give me some examples of the titles that will be used. Normally we do require a title clearance report to clear coverage for a title. But let's see what these titles look like and maybe I will be able to provide coverage without a report.*

Let me know and thanks,

Best regards,

Kristie Kobler, MLIS

Senior Associate Underwriter, Professional Lines| AmWins Access Insurance Services, LLC

We've responded with the show title which is our own production meaning we created it and own title rights.

Perhaps this show's title can be added to the local TV listings so as to not show up simply as 'leased access'.. This restaurant is so well known in Las Vegas the title should help draw viewers.

If this is still all all we must do to get this on the channel, please advise today, Friday, so we can do whatever else is needed over the weekend.

Leased Access

Jul 31

Response <LeasedAccessResponse@cox.com>

to me

Risk management is reviewing the latest email documentation versus the requested items. We will respond upon the report from risk management.

Charlie Stogner <stogtv@gmail.com>

Aug 1

to Leased

It appears our insurance company now says all the requirements you demand of the

policy has been met so I'm hoping 'risk management' won't take long on this.

We're hurting. We've long expended \$20,000 and still not on the channel.

Please...

Leased Access

Aug 2

Response <LeasedAccessResponse@cox.com>

to Dr, me

As Cox has explained in multiple correspondence with you, the documentation you have provided regarding the insurance required under the Agreement that you executed, as well as your correspondence and the correspondence from Jon Basso regarding his role in the production, control and ownership of the programming proposed to be retransmitted over Cox's Las Vegas cable system, raise important insurance coverage issues that you unfortunately continue to gloss over either willfully or perhaps due to confusion. Contrary to Jon Basso's statements to Cox, you vigorously assert in your email to Cox dated July 27, 2017, that Jon Basso and other unnamed individuals who may play a role in creating and producing the content for the programming proposed to be retransmitted over Cox's Las Vegas cable system are in fact your agents under your control and direction for purposes of your Agreement with Cox.

As explained in more detail in Cox's correspondence to you dated July 26, 2017, the information StogMedia has provided to date concerning its insurance coverage, including Section II.L.6 and Endorsement 8 of your Axis policy, does not reflect insurance coverage for StogMedia's agents and independent contractors.

As previously noted in Cox's July 26 correspondence to you, Section IV.A.21 of the Axis policy excludes from coverage "infringements or other Claims arising from the title of any Scheduled Production(s) until a satisfactory title report is submitted and approved by the Company and specifically endorsed hereon." Your correspondence to Cox dated Friday, July 28, 2017, forwarding comments from Ms. Kristie Kobler, reflects that your insurance company still is contemplating whether to modify or delete the Exclusion in Section IV.A.21 of the policy, which leaves the matter unresolved.

In Ms. Philpott's correspondence to you delivered via email on July 20, 2017 and certified mail on July 21, 2017, StogMedia was given a 15-day window to resolve the outstanding issues and problems with your application and insurance coverage. Please be advised that the time is running out before Cox will consider this matter terminated.

INSURANCE CORRESPONDENCE AGAIN

Charlie Stogner <stogtv@gmail.com>

Aug 3

to augusta.kelley

Here's what they asked in the last message I received:

Cox assumes that the intent of the Endorsement No. 8 to StogMedia's Axis insurance policy is to exclude the Scheduled Productions from the Policy's Exclusion A.21, not the Heart Attack Grill restaurant. If this assumption is correct, please have your insurance carrier revise Endorsement No. 8 to include the following language:

"It is agreed Part IV., EXCLUSIONS, A.21. of the policy is deleted with respect to the Scheduled Productions (currently titled "The Heart Attack Grill Diet") that will take place on a daily basis in or around a Las Vegas, NV restaurant known as the Heart Attack Grill and that will be retransmitted over the cable system of Cox Communications Las Vegas, Inc. ("Cox") pursuant to a Leased Access Programming Agreement between Cox and StogMedia.

Please advise ASAP as to the status of the insurance coverage for StogMedia's agents and independent contractors that will be involved with the Scheduled Productions, as explained in Cox's earlier correspondence.

I think this is the last change you made before that message.

Endorsement No. 8

AXIS Insurance Company

111 S. Wacker Drive, Suite 3500, Chicago, Illinois 60606

Effective date of this endorsement: 12:01 a.m. on April 16, 2017

To be attached to and form part of

Policy Number

Number: MCN000108521701 Issued

to: Charles Stogner DBA

StogMedia

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TITLE COVERAGE ENDORSEMENT

It is agreed Part IV., **EXCLUSIONS**, A.21. of the policy is deleted as respects "Heart Attack Grill". All other provisions of this policy remain unchanged.

I badly need to get these people satisfied and then I can petition FCC to order them to not demand specifics in insurance unless they first prove they do so for all other programmers they carry.. That's what FCC says they must do to require this of us. T

We're pleased with our coverage and the assistance and support we've received through the years. Sorry to put you to so much trouble.

Augusta Kelley <Augusta.Kelley@amwins.com>

Aug 3

to Meleasia, me

Good afternoon,

Please see the below from the Carrier, I hope this clears this up.

Cox is not reading the policy and endorsements correctly and they are off base on what Endorsement #8 provides.

- Exclusion A. 21 excludes coverage for any claims arising out of the use of any title used in the Scheduled Production.
- Endorsement #8, amends Exclusion A.21 and provides title coverage for “Heart Attack Grill”.
- “Scheduled Production(s)” Endorsement #6 reads as follows: Producers of commercials, industrial and educational films, audio or audio-visual presentations for corporate, industrial or educational clients (see endorsement FE-41) and community programming for cable television produced by the “Named Insured” during the policy period.
- If “Heart Attack Grill” falls under this definition, then it is covered by the policy. If a claims comes in regarding the use of that title, endorsement #8 provides the coverage to defend that claim. Two separate issues.
- Exclusions, A.21 excludes title coverage from policy.
- End’t 8 is providing title coverage for the title “Heart Attach Grill”.

This is providing the title coverage for “Heart Attack Grill” as Cox required. We fulfilled their issue with this endorsement. What they wrote has nothing to do with title coverage. Endorsement #8 is correct, their language is not. There will be no changes to the language contained on this endorsement.

Thank you,

Augusta Kelley, MLIS

ATTACHMENT 17, Endorsement 8

Charlie Stogner <stogtv@gmail.com>

Aug 3

to Leased

I unsure whether you believe it or not but StogMedia is trying to do whatever it takes to satisfy Cox' demands for permitting us to exercise the right of carriage of leased access as provided by the law.

I had recently sent some comments on what you may put in the final document but you do understand you hold an axe over my head and I'll have to concede to whatever terms and conditions you put in the document.

I've now got an additional programmer interested in being a StogMedia affiliate at Las Vegas and San Diego. Since I have the latest Las Vegas rates, is it possible you can forward those for San Diego?

Leased Access

Aug 4

Response <LeasedAccessResponse@cox.com>

to Dr, me

As previously noted in multiple correspondence to you, Section IV.A.21 of the Axis policy excludes from coverage “infringements or other Claims arising from the title of any Scheduled Production(s) until a satisfactory title report is submitted and approved by the Company and specifically endorsed hereon.” Endorsement No.8 that you sent to Cox on Wednesday, August 2 states, in part: “It is agreed Part IV., **EXCLUSIONS, A.21.** of the policy is deleted as respects “Heart Attack Grill”.

Cox agrees that StogMedia’s Axis insurance policy will provide title coverage for any titled production that is specifically endorsed to the policy. That’s the way the title exclusion works – that title coverage will apply only when a production’s title is specifically added to the policy via endorsement. According to Exhibit A of the Leased Access Programming Agreement (the “Agreement”) that StogMedia executed, the title of the production is “The Heart Attack Grill Diet.” Of course that could change overnight or in some subsequent episode. Indeed, each episode could have a different name or some variation on the title “The Heart Attack Grill Diet”. Each presumably would be a separate “title” under the policy requiring it to be specifically endorsed to the policy before coverage under the policy applied to any infringement or other claims. On August 2, Cox proposed a reasonable revision to Endorsement No.8 to address these concerns, but it was rejected by StogMedia and its insurance company.

In an attempt to resolve this matter, Cox proposes that Endorsement No.8 be revised to read in pertinent part as follows: **“It is agreed Part IV., EXCLUSIONS, A.21. of the policy is deleted with respect to “The Heart Attack Grill Diet”.** StogMedia then will be required under its Agreement with Cox to submit any variation of that title or a different title for the Scheduled Productions to the insurance company for endorsement to the policy.

With respect to the status of StogMedia’s insurance coverage for its agents and independent contractors that will be involved with the Scheduled Productions, Cox has explained what StogMedia needs to do multiple times in past correspondence. StogMedia’s most recent claim in its correspondence to Cox dated August 2, 2017, is that “[w]e use no agents or Independent contractors any more or less than a local broadcast TV station.” StogMedia has claimed that Jon Basso is StogMedia’s agent for purposes of the programming that will be retransmitted over Cox’s cable system pursuant to the Agreement that StogMedia executed. Mr. Basso, who apparently has a production company named Bad Diet Productions, claims that StogMedia is his agent and his company will be doing the production of the programming that will be retransmitted over Cox’s cable system pursuant to the Agreement.

Moreover, in email correspondence dated August 3, 2017, StogMedia's insurance agent, Ms. Kelley, appears to be stating that there is coverage under StogMedia's policy as long as the production falls under the general description in "Scheduled Productions" Endorsement #6: "community programming for cable television produced by the "Named Insured" during the policy period." The problem is that it doesn't appear that StogMedia (according to Mr. Basso) actually will be producing the work or that it will be produced "under StogMedia's direction". Also, according to the policy Endorsement #7A, Cox is added as an additional insured only with respects to "Matter furnished by the Named Insured" (*i.e.*, StogMedia). It appears debatable as to whether the programming is produced, furnished, controlled, directed or owned by StogMedia or Mr. Basso and his production company.

Cox does not have a copy of any agreement between StogMedia and Mr. Basso or his production company, and Cox has no way of knowing who is acting as agent for the other. If, as claimed by StogMedia, Mr. Basso and his production company or any other entity is in fact an agent or independent contractor under the direction of StogMedia in the production of The Heart Attack Grill Diet (or any variation thereof), then Section II.L.6. of StogMedia's policy only covers such agents or independent contractors **if** "the Named Insured [*i.e.*, StogMedia] . . . agrees to provide the insurance afforded by this policy as respects such services or Matter."

Cox has identified this outstanding issue numerous times in its correspondence to StogMedia and StogMedia has provided no clear answer, only antagonistic and argumentative commentary. The question remains - has StogMedia agreed to provide the insurance afforded by its policy to its agents and independent contractors in connection with the production of the programming covered by the Agreement it executed? If so, please provide evidence of such agreement. If not, Cox believes the issues (including the difference between Mr. Basso and StogMedia over who is the agent) would be eliminated if Mr. Basso and his production company were made a Named Insured under the policy for purposes of any programming that will be produced and retransmitted on Cox's Las Vegas cable system pursuant to the Agreement that StogMedia executed. However, StogMedia should check with its insurance agent to determine the appropriate way to resolve this issue.

From: Charlie Stogner [mailto:stogtv@gmail.com]
Sent: Thursday, August 3, 2017 1:53 PM
To: Leased Access Response <LeasedAccessResponse@cox.com>
Subject: Fwd: Cox issues

I unsure whether you believe it or not but StogMedia is trying to do whatever it takes to satisfy Cox' demands for permitting us to exercise the right of carriage of leased access as provided by the law

Leased Access
Response <LeasedAccessResponse@cox.com>
to me, Dr

Aug 9

Mr. Stogner per your request here's is a bullet point summary of the insurance issues stated below. When these issues are addressed and resolved we will be able to move forward and execute the agreement.

1. **Endorsement No.8 be revised to change the title from “Heart Attack Grill” to “The Heart Attack Grill Diet”.**
 - a. On June 3rd you indicated the title of the program to be carried on Cox's Las Vegas system is "The Heart Attack Grill Diet"
 - b. On June 28th you signed the agreement which lists the title of the program as "The Heart Attack Grill Diet"
 - c. StogMedia then will be required under its Agreement with Cox to submit any variation of that title or a different title for the Scheduled Productions to the insurance company for endorsement to the policy
2. **Mr. Basso and his production company Named Insured under the Stog Media policy for purposes of any programming that will be produced and retransmitted on Cox's Las Vegas cable system pursuant to the Agreement**
 - a. StogMedia has claimed that Jon Basso is StogMedia's agent for purposes of the programming
 - b. Mr. Basso and his production company, Bad Diet Productions, claims that StogMedia is his agent and his company will be doing the production of the programming
 - c. If, as claimed by StogMedia, Mr. Basso and his production company is in fact an agent or independent contractor under the direction of StogMedia in the production of “The Heart Attack Grill Diet” (or any variation thereof), then Section II.L.6. of StogMedia's policy only covers such agents or independent contractors if “the Named Insured [i.e., StogMedia] . . . agrees to provide the insurance afforded by this policy as respects such services or Matter.”

August 15th

This is not that simple.

Refusing to act in 'good faith' and honor StogMedia's request to visit Cox for an open and frank discussion of their request for airtime at Las Vegas is the most glaring sign of the recalcitrant attitude you've exhibited in this action.

You have refused to act in a cooperative manner, instead arbitrarily setting 'terms and conditions' I'm comfortable are in violation of the basic law and/or FCC rules.

You refuse to acknowledge our pointing out we contend you are in violation of 47 U.S. Code § 532 - Cable channels for commercial use which reads at “C’(2) says....”A cable operator shall not exercise any editorial control over any video programming provided pursuant to this section, or in any other way consider the

content of such programming, except that a cable operator may refuse to transmit any leased access program or portion of a leased access program which contains obscenity, indecency, or nudity and may consider such content to the minimum extent necessary to establish a reasonable price for the commercial use of designated channel capacity by an unaffiliated person.” (1)

You refuse to acknowledge our pointing out FCC says, Cable operators will **bear the burden of proof in establishing reasonableness** for insurance. Similar to the rule for security deposits, 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. *The burden of proof in establishing reasonableness was placed on cable.*

I do not believe you can provide any evidence that supports your demand our show must be made 'additional insured'. One can see infomercials airing on the same Las Vegas channel as will, or would, be our leased access programming and I seriously doubt the clients have to provide you with proof of insurance. In fact, where one to accept your position, it appears any 'spot ads' appearing in a leased access program not personally produced by the lessee would have to be made 'additional insured'.

You've damaged me considerably and I feel in a most un-responsible manner. Your correspondence with me has bordered on the arrogant and very unprofessional manner. You refused my request to come to your offices where we could meet and discuss what FCC seems to believe are 'negotiated' agreements while I see them as 'adhesive contracts'. Instead of acting in a manner consistent with trying to see that you handle leased access in a manner prescribed by Congress and adhering to FCC rules, you chose to resist cooperating and/or even having a responsible discussion, notwithstanding our phone conversation.

Your denial of providing us carriage as per the law leaves us with a few options of where to go with this.

One is the FTC petition route and although StogMedia has a fairly good record of prevailing, it's nevertheless a fact FCC takes weeks, sometimes months, to act on petitions. This makes this the least desirable action and based on history of petition orders the most FCC does to an operator they rule against is 'pat them on the hand' and tell them to 'do better', They refuse to even assess a forfeiture where the operator's actions are grossly offensive.

Second is using the U.S. District Courts, a provision in the law that I find no record of anyone ever using in a disputed leased access case.

Here, leased access says there is **Right of action in district court;**

Any person aggrieved by the failure or refusal of a cable operator to make channel capacity available for use pursuant to this section may bring an action in the district court of the United States for the judicial district in which the cable system is located to compel that such capacity be made available. If the court finds that the channel capacity sought by such person has not been made available in accordance with this section, or finds that the price, terms, or conditions established by the cable operator are unreasonable, the court may order such system to make available to such person the channel capacity sought, and further determine the appropriate price, terms, or conditions for such use consistent with subsection (c) of this section, and **may award actual damages** if it deems such relief appropriate. In any such action, the court shall not consider any price, term, or condition established between an operator and an affiliate for comparable services.

This may be the most desirable route since the court can award damages to the injured party.

It appears there could be an ulterior motive in Cox denying StogMedia's show considering should we place the show on ch. 48 as 'long form' the fee would be \$300 for the hour instead of the leased rate of \$123.22. Not bad reasoning is it?

Or, what I consider is a third option, with our trade association taking the case to FCC, while using a news release blitz to trade, business and general news media to let the public see how Cox played the role of 'bully' while keeping competition off the site.

You say in your June 16 email, *Cox has been offering leased channel capacity for commercial use on its cable television systems throughout the country consistent with Section 612 of the Communications Act, 47 U.S.C. § 532, and associated FCC rules, 47 C.F.R. §§ 76.701, 76.970, and 76.971, for almost thirty-three (33) years. During that time, every programmer that has leased channel capacity from Cox has, without objection, entered into a Leased Access Programming Agreement substantially similar to the one Cox recently provided to StogMedia.* Have you considered chances are these lessees were not well versed and experienced in executing formal agreements and where unaware that some major 'conditions' imposed on them by Cox were onerous and in violation of the law and/or FCC rules?

Here's an example of an misleading statement in your leased access instructions sent to an inquirer in May, 2008, You say, *Applications will be received by Cox Communications Gulf Coast, L.L.C. ("Cox") for the licensing of available channels or bandwidth for the transmission, by cablecasting means, of program material to Cox subscribers.* Note the use of the word 'licensing', although it is to be found nowhere in the law or rules. There simply is no requirement for programmers to be 'licensed' by operators. Instead it's a simply requirement for operators to provide carriage except in certain situations, obscene content,

Cox rather than work with leased access programmers toward making the best of the law, goes to great lengths to make it not work

Cox feloniously and I believe maliciously, deprived me from the right to airtime as provided by Section 612 by two, if not more, actions expressly addressed by the law.

It's interesting to note StogMedia was using leased access carriage with Cox at Harrison, Ar \in '09 with an LPTV as our affiliate and with Cox at Sierra Vista, Az, in '10 with Margaret Dillard as the affiliate. There was NO demand for them being named 'additional insured' nor should there have been.

You need to do some serious thinking about what you've done with this Las Vegas action. It may precipitate FCC finally realizing there never has been any claim filed regarding obscene content aired by a leased access programmer against the programmer or operator and end permitting operators to demand it. StogMedia, having come from a newspaper background, sees the need for 'Media Perils' for the purposes it covers (not obscene content) and has had this type coverage even when publishing newspapers.

We have no problem making the operator 'additional insured' but you've gone too far. What's worse than the matter of insurance is you've overtly and deliberately 'exercised a degree of control over our editorial content'.

You need to carefully review what FCC says is the category of content.

They list three types. 1. Pay per view; 2. Direct sales, QVC style; and 'Other', "*Video programming is defined as "programming provided by, or generally considered comparable to programming provided by, a television broadcast station."* Of course it's not uncommon for broadcasters to accept and air 'infomercials' the same as Cox does on Las Vegas Ch. 48.

1 This means price as to whether the programming will be "Pay per View", "Direct Sales" or "Other". Other would be the rate as set for leased access by an operator using the FCC formula.

Charlie Stogner <stogtv@gmail.com>

Aug 30

to Leased, jennifer.hight., Joiava, Derrick

You have no idea what problems you are causing with us having to name our affiliate as 'additional insured' due to the application required for this.

Question is....if Jon Basso sells or simply grants me rights to the show, is it not then my sole responsibility, my liability, the same as if this was any show StogMedia has rights to air?

While we've tried our best to satisfy Cox in this, trying to meet the demands placed on

our editorial content in order to get our programming on the air, we've never really brought up the issue of cable operators being prohibited from *exercising any editorial control over programming carried on leased access channels.*

Does not Cox insistence on the 'additional insurance' on a show an example of 'exercising editorial control.'

As I've tried to explain, StogMedia is going to do whatever it takes to be able to exercise the right to leased access airtime so if you can't agree our having the rights to any show means it is thereby covered by our insurance, please share with me how this is done by the other programmers, leased and non-leased' on Cox channels?

You are mindful of FCC's position that *the burden of establishing that the required insurance is reasonable is upon the cable operator; whether or not the operator requires non-leased programmers (long-form for example); whether or not Cox has incurred litigation costs in this type case or the liability the programming will pose a liability risk.*

I've avoided making an issue over these two matters, hoping Cox would go ahead and provide us carriage.

If your position is our affiliates are 'agents' according to a strict reading of Black's Law, then what if any employee, an on-the-air personality, camera operator, video editor, or???? produces a show (perhaps covers a ball game); is it Cox' position we then must have this individual named 'additional insured'.

This has passed being urgent and I would appreciate a reply today so we can proceed with whatever it is we must do to satisfy Cox.

Charlie Stogner <stogtv@gmail.com>

Aug 30

to Leased, jennifer.hight., Joiava, Derrick
They say Jon Basso/Bad Diet Productions has NO liability.

Will it suffice if they write Cox stating this? Will this do?

Charlie Stogner <stogtv@gmail.com>

Sep 14

to Leased, jennifer.hight., Joiava, Derrick, bcc: Meleasia

We finally have a definitive answer from our insurance carrier that says *"because StogMedia is not producing the commercial / advertisement then there is no coverage afforded under this policy and cannot be added via endorsement."*

This means we've reached a point in this where now the burden of proof that supports your demand this show be made 'additional insured' lies with you.
Should you continue to deny us carriage based on your insistence on the

coverage without providing proof as FCC says, then at some point this must be taken up with FCC. If this must come to be, let's hope it doesn't hold us off a few more months. It has already delayed us over two months.

I shouldn't have to point out that the law and FCC rules have you 'held harmless' from our programming with the exception of permitting you to require coverage to protect from some claim of obscenity in our material. Here's where you can view the show on YouTube. <https://www.youtube.com/watch?v=qe8eR0RxBOc&t=30s>

If you now see where this cannot be made 'additional insured' and determine to go ahead and finalize the agreement, you need to bring it up to date for our signatures.

Leased Access

Sep 15

Response <LeasedAccessResponse@cox.com>

to me

Mr. Stogner you stated below that "*We finally have a definitive answer from our insurance carrier that says " because StogMedia is not producing the commercial / advertisement then there is no coverage afforded under this policy and cannot be added via endorsement.*" We have explained numerous times that insurance must cover Mr. Basso and any programming Mr. Basso or his company produces and provides to Cox to the same extent as the insurance covers programming, if any, that StogMedia produces and provides to Cox. Therefore we are considering this matter closed and will return Mr. Basso's quarterly payment. If in the future you wish to pursue leased access opportunities with our Las Vegas market please resubmit an application.

This is the end of the email correspondence and AT THIS POINT on this date it appears Cox has fully refused carriage.

Last e-mail in chain:

Charlie Stogner <stogtv@gmail.com>

Sep 19

to Leased, Derrick, Joiava, jennifer.hight., bcc: me

Please see our attachment in reference to Cox denying us airtime at Las Vegas

Then please see attached new 'application' for an agreement for Las Vegas.

Bear in mind that when a cable operator establishes service in a new franchise, an area perhaps where no 'wired' cable yet exists, it's standard to first get the franchise before seeking financing and/or beginning construction and especially prior to soliciting local advertisers if they're going to have a 'local origination' channel.

This same process often applies to establishing leased access carriage on a cable site.

StogMedia has for years usually obtained a formal agreement as evidence they are authorized to have the cable site provide them airtime, first come, first serve, of course prior to developing local content, especially when local business advertising is to be used.

Please understand this new application for a leased access agreement at Las Vegas is only for an agreement showing we meet FCC requirements for airtime. It is not an 'order'. Once we have the 'formal agreement' we can proceed with requesting airtime.

Yours,
Charlie Stogner
StogTv

2 Attachments

1: "Not that Simple"; 2: blank Cox application