

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

In the Matter of	)	
	)	
StogMedia, d/b/a Stog TV	)	CSR-7849-L
v.	)	
Cable One, Inc.	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: March 5, 2009**

**Released: March 5, 2009**

By the Senior Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. On April 1, 2008, StogMedia, d/b/a Stog TV (“StogMedia”), filed the above-captioned petition for relief pursuant to Section 76.975(b) of the Commission’s rules alleging that Cable One, Inc. (“Cable One”) has violated the Commission’s leased access rules by charging fees for broadband transport used to deliver StogMedia’s IPTV programming from StogMedia’s servers to Cable One’s system headends in Biloxi and Long Beach, Mississippi.<sup>1</sup> In particular, StogMedia contends that Cable One’s failure to transport its IPTV signal at no charge violates Section 76.971(c) of the Commission’s rules, which bars cable operators from imposing on leased access programmers fees for the same kind of technical support that they provide to non-leased access programmers.<sup>2</sup> StogMedia requests that the Commission direct Cable One to provide broadband transport for its IPTV signal at no charge, and to refund past payments. On April 23, 2008, Cable One filed a response to the petition.<sup>3</sup> For the reasons set forth below, we deny StogMedia’s petition.

**II. BACKGROUND**

2. The Cable Communications Policy Act of 1984 imposed on cable operators a commercial leased access obligation designed to assure access to cable systems by unaffiliated third parties that wish to distribute video programming absent the editorial control of cable operators.<sup>4</sup> The leased access provisions in the 1984 Cable Act established channel set-aside requirements proportionate to a system’s total activated channel capacity. In the Cable Television Consumer Protection and Competition Act of 1992, Congress revised those provisions and directed the Commission to implement rules governing leased access.<sup>5</sup> In accordance with this statutory mandate, the Commission adopted rules regarding the

<sup>1</sup> StogMedia Petition for Expedited Special Relief, filed April 1, 2008 (“StogMedia Petition”). We note that StogMedia failed to certify that its petition was served on Cable One as required by Section 76.975(c) of the Commission’s rules. See 47 C.F.R. § 76.975(c).

<sup>2</sup> 47 C.F.R. § 76.971(c).

<sup>3</sup> Cable One Answer to StogMedia Petition, filed April 23, 2008 (“Cable One Answer”).

<sup>4</sup> Pub. L. No. 98-549, 98 Stat. 2779 (1984) (“1984 Cable Act”).

<sup>5</sup> *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631(1993).

rates, terms and conditions under which cable operators must provide leased access pursuant to section 612.<sup>6</sup>

### III. DISCUSSION

3. StogMedia is a Mississippi-based video production company that distributes video programming via leased access capacity purchased from multiple cable systems nationwide.<sup>7</sup> StogMedia states that, since it began leasing capacity on Cable One's Biloxi and Long Beach systems, Cable One has charged it fees for the use of broadband capacity to transport its IPTV signal to Cable One's headends.<sup>8</sup> Because Cable One does not assess similar charges on non-leased access programmers, StogMedia asserts, Cable One has violated Section 76.971(c) of the Commission's rules, which precludes cable operators from imposing charges for the same kind of technical support that they provide to non-leased access programmers.<sup>9</sup> StogMedia further contends that, even if no other programmers utilize broadband capacity to transport video programming to Cable One's headends, it nevertheless is entitled to use Cable One's capacity free of charge insofar as Cable One uses such capacity for its own Internet access and transmission of video programming.<sup>10</sup> StogMedia also contends that because Cable One does not charge a fee to non-leased access programmers to use satellite receive dishes located at its headend, Cable One is required to provide StogMedia with free broadband transport of its signal from its production facility to Cable One's headend.<sup>11</sup> In support of this argument, StogMedia contends that Cable One's use of satellite receive dishes to receive programming from non-leased access programmers is the "functional equivalent" of providing them with broadband transport to Cable One's headend.<sup>12</sup>

4. Cable One states that, although the Commission's rules require cable operators to provide leased access programmers with some technical support, the Commission has found transport services to

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<sup>6</sup> *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd at 5941-5942, ¶ 500; Order on Reconsideration of the First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 16933 (1996); Second Report and Order and Second Order on Reconsideration of the First Report and Order ("Second Report and Order"), 12 FCC Rcd 5267 (1997); *In the Matter of Leased Commercial Access*, Report and Order and Further Notice of Proposed Rulemaking, MB Docket No. 07-42 (rel. Feb. 1, 2008).

<sup>7</sup> StogMedia Petition at 1.

<sup>8</sup> *See id.* at 1-2, 4. Cable One has charged StogMedia \$99 per month for commercial Internet access service to enable StogMedia to deliver its IP-formatted leased access programming from its servers to Cable One's headends, which Cable One then places on the designated leased access channels for airing. Cable One Answer at 1-2.

<sup>9</sup> StogMedia Petition at 1-2, 4. Section 76.971(c) of the Commission's rules provides, in pertinent part:

Cable operators are required to provide unaffiliated leased access users the minimal level of technical support necessary for users to present their material on the air, and may not unreasonably refuse to cooperate with a leased access user in order to prevent that user from obtaining channel capacity. Leased access users must reimburse operators for the reasonable cost of any technical support actually provided by the operator that is beyond that provided for non-leased access programmers on the system.

47 C.F.R. § 76.971(c).

<sup>10</sup> *Id.* at 6.

<sup>11</sup> StogMedia Petition at 5.

<sup>12</sup> *See id.*

fall outside the scope of this requirement.<sup>13</sup> Cable One further maintains that, even if it were required to provide access to its Internet backbone, it would not be required to do so free of charge to programmers.<sup>14</sup> In this regard, Cable One notes that it pays a fee to AT&T to use the broadband capacity that Stogmedia seeks the use of for free to transport its programming to Cable One's headend. Additionally, Cable One points out that no other programmer – leased access or otherwise – currently uses the broadband capacity at issue to deliver programming to its headends.<sup>15</sup> In fact, it maintains that other than StogMedia's use, Cable One only uses the broadband capacity at issue here to transport data.<sup>16</sup> Furthermore, Cable One maintains that its own use of the subject broadband capacity, for which it pays a fee to AT&T, does not preclude it from charging StogMedia a fee to use such capacity.<sup>17</sup>

5. We deny StogMedia's petition. Section 76.975(c) of the Commission's rules specifically obligates leased access users to reimburse cable operators "for the reasonable cost of any technical support actually provided by the operator that is beyond that provided for non-leased access programmers on the system."<sup>18</sup> This has been interpreted to mean that a cable operator must provide, free of charge, the same technical support that it provides free of charge to non-leased access programmers.<sup>19</sup> Thus, the relevant test is whether a cable operator is providing like technical support for no fee to a non-leased access programmer. In this regard, Cable One attests that "StogMedia's request for internet transport is unique and requires Cable One to provide . . . technical services that have not been, and are not, currently [being] provided to others."<sup>20</sup> 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,<sup>21</sup> and StogMedia concedes as much.<sup>22</sup> 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. In this regard, we note that StogMedia has not disputed the reasonableness of Cable One's fee, but Cable One's right to impose the fee. If StogMedia believes that the rate imposed by Cable One is unreasonable, it is free to contest the reasonableness of the rate in the future.

6. We also reject StogMedia's "functional equivalent" argument, for which no precedent exists. However, even if we were to accept its equivalency argument, StogMedia has failed to show how Cable One's provision of satellite reception dishes at its headend relieves StogMedia of its responsibility for delivering its programming to Cable One's headend. Contrary to StogMedia's contention, Cable

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<sup>13</sup> *Id.* at 2-3, citing *Engle Broadcasting v. Comcast*, 16 FCC Rcd 17650, ¶ 7 (Cable Services Bur. 2001) ("System operators do not have any responsibility for assisting in the delivery of programming from a programmer's studio or production facility to the headend or input point of the cable system.").

<sup>14</sup> *Id.* at 4. Cable One states that "[i]f StogMedia wants to deliver its programming over the Internet, it will need to make its own arrangements with an Internet backbone provider to deliver connectivity to Cable One's headend . . . without tying up capacity paid for by Cable One for its own uses. *Id.*

<sup>15</sup> *Id.* at 5.

<sup>16</sup> Declaration of John D. Gosch, Vice President-Southeast Division, Cable One, Inc., April 23, 2008 (attached to Cable One Answer).

<sup>17</sup> *Id.*

<sup>18</sup> 47 C.F.R. § 76.971(c).

<sup>19</sup> Second Report and Order, 12 FCC Rcd at 5324, ¶ 114.

<sup>20</sup> Declaration of John D. Gosch, Vice President-Southeast Division, Cable One, Inc., April 23, 2008 (attached to Cable One Answer).

<sup>21</sup> *Id.*

<sup>22</sup> StogMedia Petition, at 6.

One's use of satellite dishes at its headend merely serves as a point to which non-leased access programmers, as well as leased access programmers, can deliver their programming. Cable One's provision of such facilities does not absolve leased access programmers, such as StogMedia, from the responsibility of transporting their programming to cable systems' headends.

7. Furthermore, contrary to StogMedia's assertions, the fact that Cable One also uses the broadband capacity at issue for its own purposes, for which it pays a fee to AT&T, does not preclude it from charging StogMedia a fee for its use of such capacity.<sup>23</sup> Furthermore, because Cable One is not providing broadband capacity for free to any non-leased or leased access programmer on its system, it may charge StogMedia. For these reasons, we find that neither Section 612 of the Act, nor the Commission's rules, preclude Cable One from charging StogMedia for the use of broadband capacity to deliver its IP video programming to Cable One's headends.

#### IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 76.975 of the Commission's rules, 47 C.F.R. § 76.975, the petition for relief filed by StogMedia **IS DENIED** as discussed herein.

7. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules, 47 C.F.R. § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker  
Senior Deputy Chief  
Policy Division, Media Bureau

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<sup>23</sup> See *A+ Video v. Time Warner Cable*, 20 FCC Rcd 10090, ¶ 5 (Media Bur. 2005) (finding that Time Warner's provision of technical services to itself does not preclude it from charging leased access users for the same services).