

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

In the Matter of:)	
)	
Don Henry)	
)	CSR 5504-L
v.)	
)	
AT&T Cable Services)	
)	
For Commercial Leased Access)	

MEMORANDUM OPINION AND ORDER

Adopted: October 19, 2001

Released: October 25, 2001

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Don Henry ("Mr. Henry") filed a petition for relief pursuant to Section 76.975 of the Commission's rules¹ alleging that AT&T Cable Services ("AT&T Cable") has failed to designate any channels for commercial leased access, failed to respond on a timely basis to a request for information concerning commercial leased access services, and failed to offer technical support for commercial leased access services on its cable system in Eugene, Oregon, in violation of Section 612 of the Communications Act of 1934, as amended ("Communications Act").² AT&T Cable filed a response to the petition.

II. BACKGROUND

2. The Cable Communications Policy Act of 1984 imposed on cable operators a commercial leased access requirement designed to assure access to cable systems by unaffiliated third parties who have a desire to distribute video programming free of editorial control of cable operators.³ Channel set-aside requirements were established proportionate to a system's total activated channel capacity. The Cable Television Consumer Protection and Competition Act of 1992 revised the leased access requirements and directed the Commission to implement rules to govern this system of channel leasing.⁴ *In Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Report and Order and Further Notice of Proposed Rulemaking ("Rate Order"),*⁵ the Commission initially adopted rules for leased access addressing maximum reasonable rates, reasonable terms and conditions of use, minority and educational programming, and procedures for resolution of disputes.⁶ The Commission

¹47 C.F.R. § 76.975.

²47 U.S.C. § 532.

³Pub. L. No. 98-549, 98 Stat. 2779 (1984).

⁴Pub. L. No. 102-385, 106 Stat. 1460 (1992). See Section 612(b) of the Communications Act of 1934, as amended, 47 U.S.C. §532(b).

⁵8 FCC Rcd 5631 (1993).

⁶See 47 C.F.R. §76.970, 76.971, 76.975 and 76.977 (1995).

modified some of its leased access rules in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Second Report and Order and Second Order on Reconsideration of the First Report and Order ("*Second Order*").⁷

III. DISCUSSION AND ANALYSIS

3. Mr. Henry asserts that written requests for commercial leased access information were sent to AT&T Cable on October 28 and November 2, 1999. Mr. Henry asserts further that no response to the first request was received, and that the only response to the second request consisted of a copy of the request with a hand written notation on it stating, "We do not have leased access channels on our system. Sorry we could not accommodate you."⁸ Mr. Henry contends that these allegations establish that AT&T Cable has failed to designate any channels for commercial leased access and failed to respond on a timely basis to a request for information concerning leased access services, in violation of Section 612(b) of the Communications Act and Section 76.970 of the Commission's leased access regulations.⁹

4. AT&T Cable states in response that information concerning leased access services required by Section 76.970(h)(1) of the Commission's rules was sent to Mr. Henry on January 27, 2000.¹⁰ AT&T Cable argues that, because the leased access information required by the regulations has now been sent to Mr. Henry and since Mr. Henry's request for relief appears to be limited to that of issuing an order requiring compliance with the Commission's leased access regulations, Mr. Henry's request for relief has been satisfied and the petition should be dismissed.

5. AT&T Cable further states that the matters about which Mr. Henry complains resulted from confusion caused by Mr. Henry's requests being addressed to AT&T Media Services instead of AT&T Cable Services, and the second request also being mailed to its offices in Corvallis, Oregon, instead of its Eugene, Oregon offices.¹¹ AT&T Cable states that its Eugene, Oregon cable system does not have a local origination channel and that AT&T Media Services is responsible for advertising sales for its cable system.¹² AT&T Cable further states that the AT&T Media Services employee to whom Mr. Henry's request was addressed had responsibility for insertion of commercial advertisements into the schedules of cable programming networks.¹³ That employee, failing to recognize Mr. Henry's request as one for leased access services, treated it as one for local origination advertising time which is not provided by AT&T Media Services and indicated such on the copy of the request sent back to Mr. Henry. AT&T Cable states that it has now instructed its AT&T Media Services employees of the company's leased access obligations and to forward all such requests to the appropriate manager for Cable Services.¹⁴

⁷12 FCC Rcd 5267 (1997). See also *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Order on Reconsideration of the First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 16933 (1996).

⁸Petition at 2 & Attachments.

⁹See 47 U.S.C. § 532(b). A cable operator is required to provide information concerning leased access services within 15 calendar days of a written request. See 47 C.F.R. §76.970(h)(1).

¹⁰AT&T Cable sent leased access information to Mr. Henry after the petition was filed with the Commission on January 20, 2000. AT&T Cable Opposition at 2- 3 & Exhibit 2.

¹¹*Id.*

¹²*Id.*

¹³*Id.*

¹⁴*Id.*

AT&T Cable states that the petition itself was also mailed to AT&T Media Services and subsequently forwarded to AT&T Cable on January 21, 2000, and that six days later on January 27, 2000 leased access information was sent to Mr. Henry. Finally, AT&T Cable states that it has not been contacted by Mr. Henry since the information was forwarded to him.

6. The record shows that AT&T Cable has provided Mr. Henry with leased access information required by the Commission's regulations.¹⁵ The record further shows that AT&T Cable's delay in the provision of the requested information stemmed largely from Henry's miss-directing the requests to AT&T Media Services instead of AT&T Cable. Cable operators bear the responsibility for compliance with the Commission's leased access regulation, and other commonly controlled and affiliated companies such as AT&T Media Services have responsibilities in that regard also. Nonetheless, based on the entire record, we do not believe any relief is warranted in this matter. Accordingly, Mr. Henry's complaints regarding the provision of leased access channels and information concerning leased access services will be dismissed.

7. Finally, the record shows that Mr. Henry has not proceeded further toward entering into an arrangement for leased access services with AT&T Cable. Therefore, his allegations concerning the absence of any offer for technical services will be dismissed as premature.

IV. ORDERING CLAUSES

8. For the foregoing reasons, **IT IS HEREBY ORDERED** that the petition for relief filed by Don Henry in the captioned matter **IS HEREBY DISMISSED**.

9. This action is taken pursuant to authority delegated under Section 0.321 of the Commission rules.¹⁶

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson, Deputy Chief
Cable Services Bureau

¹⁵*Id.*

¹⁶47 C.F.R. § 0.321.