

## POLICY ON OBSCENE AND INDECENT PROGRAMMING ON LEASED ACCESS CHANNELS

In accordance with the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), 47 U.S.C. § 532(h) (1997) and Federal Communications Commission regulation 47 C.F.R. § 76.701 (1997), CoxCom, Inc. ("Cox") prohibits the exhibition on its leased access channels of any programming that Cox reasonably believes is obscene<sup>1</sup>. In addition, Cox reserves the right to restrict programming that Cox believes is in conflict with community standards in that it is indecent<sup>2</sup>. Restrictions that may be imposed by Cox include, but are not limited to, requiring that the programming be scrambled, limiting the hours of carriage to between 10 p.m. and 6 a.m., and carrying the programming on a channel where other indecent programming is carried.

Any Person or organization currently leasing or using or desiring to lease or to use time on a Cox leased access channel (a "Leased Access Programmer") must certify that the programming to be exhibited on a leased access channel does not contain any obscene material, and must certify whether it contains any indecent material. If the programmer certifies that the programming contains indecency, Cox, in its discretion, may impose restrictions on its carriage. If the programming to be exhibited is live programming, the Leased Access Programmer must certify that he/she will use reasonable efforts to ensure that obscene or indecent programs are not shown. Such Leased Access Programmer must further certify that he/she is responsible for the program's content. If the Leased Access Programmer refuses to provide the certificate, Cox may refuse

access to the channel. The certificate must be submitted no later than thirty days prior to the date on which the Leased Access Programmer has requested that its programming be aired.

Notwithstanding any Leased Access Programmer's certification that programming does not contain any obscene or indecent material, Cox reserves the right to review all or any portion of the programming to be carried on its leased access channel in advance of the date of carriage. If, after review, Cox reasonably believes that all or any portion of the programming is obscene or indecent, Cox reserves the right to refuse to carry the programming on its leased access channel or to restrict its carriage if indecent. Upon request, each leased access Programmer shall provide Cox with a tape of the programming to be carried on the leased access channel at least fifteen (15) days prior to its first scheduled date of carriage.

Cox will not allow editing and resubmission of programming that Cox has determined to be obscene and/or indecent.

Each Leased Access Programmer will be required to indemnify and to hold Cox harmless from any and all claims, suits, complaints or liability arising out of the carriage on its leased access channels of any obscene or indecent Program. In addition, such Leased Access Programmer shall agree to pay to Cox any and all damages, costs and attorneys' fees incurred by Cox in connection with responding to or defending any allegation, claim or complaint that the Leased Access Programmer's programs contained any obscene or indecent material.

If any portion of this policy is found to be unconstitutional or illegal by a court or administrative agency of competent jurisdiction, the remaining portions shall remain in effect

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<sup>1</sup> Whether a program is obscene shall be determined by reference to the definition of obscenity adopted by the United States Supreme Court Miller v. California, 413 U.S. 15 (1973). Under Miller v. California, a work is obscene if (i) the average person, applying contemporary community standards, would find the work, taken as a whole, appeals to the prurient interest, (ii) the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by applicable state law; and (iii) taken as a whole, it lacks serious literary, artistic, political or scientific value.

<sup>2</sup> 47 C.F.R. § 76.701 permits a cable operator to prohibit any programming that the cable operator "reasonably believes, describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards." In its Memorandum Opinion and Order, dated April 27, 1997, the FCC stated that a cable operator may voluntarily segregate, scramble or time-channel indecent programming.