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CLIENT UPDATE March 24, 2008

FCC Significantly Increases Leased Access Obligations, Lowers Maximum Rate

On February 1, 2008, the FCC released a Report and Order on leased access establishing new and burdensome customer service, reporting and recordkeeping regulations. At the same time, the FCC adopted a rate methodology that results in substantially lower maximum rates for leased access.

Customer service. The FCC determined that poor customer service standards “imped[e] independent programmers...from pursuing their statutory right to designated commercial leased access channels.” Accordingly, the FCC’s new leased access regulations include greatly increased “customer service” obligations. A sampling of these new obligations:

- Cable operators must include designated contact information on their websites.
- Cable operators must include a summary of the leased access law and regulations on their website.
- Cable operators must respond to requests for leased access within 3 business days (or, for “small systems,” within 30 calendar days of a *bona fide* request for leased access).
- Cable operators must provide prospective programmers with detailed information on geographic and subscriber levels of service, available channels, rates, technical and studio costs, costs and procedures for obtaining a listing in EPGs and printed programming guides, programming delivery methods, and a “comprehensive” sample leased access agreement.
- Cable operators must launch leased access programming within 35-60 days of finalizing negotiations unless the parties agree otherwise.
- Cable operators must respond to “*bona fide* proposals” for leased access by accepting the proposed terms or offering alternative terms within 10 days.

Failure to comply with the customer service standards will result in a \$500/day forfeiture. And leased access programmers no longer need to file a formal complaint with the FCC to report putative leased access violations – they can complain to the FCC orally.

Rates. The FCC found that its current “average implicit fee” formula overcompensates cable operators because it reflects the average value of a channel, while the FCC assumes

that the cable operator will elect to put leased access programming on a channel which does not generate a significant amount of revenue. This undesirable channel is now known as the “marginal channel,” and the FCC has invented a new formula to determine the maximum fee, which is now known as the “marginal implicit fee.” The marginal implicit fee is calculated on a per-subscriber basis with a maximum allowable fee of \$0.10/subscriber/month. Some small comfort - to date, the new rate methodology does not apply to a la carte programming or programmers that predominantly transmit sales presentations or program-length commercials.

Cable operators may petition the FCC to exceed the maximum allowable leased access rates. The petition must provide specific facts justifying the system’s specific leased access rates, and provide an alternative rate which balances the revenue requirements of the cable operator with the public interest goals of the leased access statute.

Reporting. Cable operators will have to file an Annual Report by April 30th of each year, which will include much of the information that the operator will need to provide in its responses to requests for leased access. It also will require information on leased access programmers using the system, denials of requests for leased access, any leased access complaints, and the extent to which the system imposes different rates, terms or conditions on leased access programmers.

Recordkeeping. Cable operators must maintain for FCC inspection sufficient supporting documentation to justify scheduled rates, including supporting contracts, calculations of implicit fees, and justifications for all adjustments.

Effective dates.

- For the customer service regulations and Annual Report, the FCC will announce an effective date upon OMB approval of the regulations.
- For the complaint procedures that directly or indirectly involve information collection requirements, the FCC will announce an effective date following OMB approval of the regulations. A few of the complaint provisions become effective on May 28, 2008, but these deal mainly with the Media Bureau’s obligations and authority in a complaint proceeding.
- The rate regulations become effective May 28, 2008 or upon OMB approval, whichever is later. For the requirement to maintain documentation supporting the rate calculations for FCC inspection, the FCC will announce an effective date upon OMB approval of the rate regulations.

If you have questions about your company’s leased access obligations, please call Nicole Paolini-Subramanya at (312) 372-3930.

Local Number Portability Applied to Interconnected VoIP Providers

In its November 8, 2007 *LNP Order*, the FCC found that end users of interconnected VoIP services should receive the benefits of local number portability (“LNP”). Accordingly, the LNP Order requires interconnected VoIP providers and their numbering partners (generally the underlying provider) to ensure that users have the ability to port their telephone numbers when changing service providers to or from an interconnected VoIP provider. The FCC found that this new regime would “benefit not only customers, but the interconnected VoIP providers themselves.”

The following regulations will become effective for interconnected VoIP providers on March 24, 2008:

- Subject to a valid port request, both the interconnected VoIP provider and its numbering partner must take all steps necessary to initiate or allow a port-in or port-out, without unreasonable delay or procedures.
- Subject to a valid port request, interconnected VoIP providers partnered with a wireline carrier for numbering resources must port-out NANP numbers to:
 - (1) A wireless carrier whose coverage area overlaps with the geographic location of the porting-out numbering partner’s rate center; or
 - (2) A wireline carrier with facilities or numbering resources in the same rate center; or
 - (3) An interconnected VoIP provider whose numbering partner meets the requirements of (1) or (2).
- Subject to a valid port request, interconnected VoIP providers partnered with a covered CMRS provider for numbering resources must port-out NANP numbers to:
 - (1) Another wireless carrier; or
 - (2) A wireline carrier within the telephone number’s originating rate center; or
 - (3) An interconnected VoIP provider whose numbering partner meets the requirements of (1) or (2).
- Interconnected VoIP providers must take any steps necessary to facilitate their numbering partner’s technical execution of the port.
- Interconnected VoIP providers may not enter into agreements that would prohibit or unreasonably delay an end user from porting between interconnected VoIP providers, or to or from a wireline carrier or a covered CMRS provider.
- Interconnected VoIP providers may not contract with an end user to prevent or hinder the rights of the end user to port its number.
- Subject to a valid port request, wireline carriers must port out NANP number to:

- (1) An interconnected VoIP provider that partners with a wireless carrier for numbering, where the wireless carrier's coverage area overlaps the geographic location of the porting-out wireline carrier's rate center; or
 - (2) An interconnected VoIP provider that partners with a wireline carrier for numbering, where the wireline carrier has facilities or numbering resources in the same rate center as the porting-out wireline carrier.
- Subject to a valid port request, wireless carriers must port out NANP number to:
 - (1) An interconnected VoIP provider that partners with a wireless carrier for numbering; or
 - (2) An interconnected VoIP provider that partners with a wireline carrier for numbering, where the wireline carrier is within the number's originating rate center.
 - Existing porting intervals will apply.¹
 - Interconnected VoIP providers must pay into the NANP and LNP funds (via Form 499).
 - LNP validation for all ports, whether intermodal, wireline-to-wireline or wireless-to-wireless, may be based on no more than the following four fields for simple ports:
 - 10-digit telephone number;
 - Customer account number;
 - 5-digit zip code; and
 - Pass code (if applicable).
 - Consumers, carriers or interconnected VoIP providers may file complaints with the FCC if they experience unreasonable delay or denial of number porting to or from an interconnected VoIP provider.

If you have any questions about local number portability, please contact Nicole Paolini-Subramanya at (312) 580-8556.

¹ The current wireline-to-wireline porting interval is four business days - wireline carriers are required to complete the LSR/FOC exchange within 24 hours and to complete the port within three business days thereafter. Although there is no FCC regulation governing the porting interval for wireless-to-wireless ports, the industry standard is 2-1/2 hours. The FCC has stated that a porting interval of longer than 2-1/2 hours might violate the "reasonableness" standard of Section 201 of the Communications Act of 1934.

The FCC has yet to establish a porting interval for intermodal (wireless-to-wireline or wireline-to-wireless) porting. That said, in its *LNP Order*, the FCC tentatively concludes that a 48-hour wireline-to-wireline and intermodal porting interval is appropriate and asks for comment on that conclusion.

FCC Requires Cable Operators to include DTV information on Subscriber Bills

On March 3, 2008, the FCC released an Order establishing rules that require cable operators to provide notice of the full-power DTV transition to subscribers. The notice may be included either as a bill stuffer or as part of an information section on the bill itself.

The notice must:

- Be in clear and conspicuous print, and should be provided in the same language as the bill;
- Explain that on February 17, 2009, a television receiver with only an analog broadcast tuner will require a converter box to receive over-the-air broadcasts with an antenna because of the digital transition;
- Indicate that customers can get more information about the DTV transition at www.DTV.gov, or by calling the cable operator at the number provided, and can get more information about the converter box program at www.dtv2009.gov, or by calling the NTIA at 1-888-DTV-2009; and
- Explain clearly what effect, if any, the DTV transition will have on the subscriber's access to service.

The FCC indicated that the most important information may be to note that sets not connected to an MVPD service may need additional equipment (i.e. converter box) or may have to be replaced.

The subscriber notice requirement will become effective 30 days after publication of the Report and Order in the Federal Register. The requirement will end as of March 31, 2009.

Please visit our website at www.cinnamonmueller.com to learn more about our lawyers and practice. You can reach Cinnamon Mueller at 312-372-3930. *This update is provided by the law firm of Cinnamon Mueller. The document is intended for informational purposes only as a service to clients of Cinnamon Mueller and to the members of the American Cable Association. It is not intended to provide specific legal advice or to substitute obtaining appropriate legal counsel. We encourage you to consult with counsel to address special compliance issues and for assistance in negotiating or handling any such matter referred to in the update.*