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**CLIENT UPDATE**  
**June 13, 2008**

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**Sixth Circuit Stays New Leased Access Regulations**

On February 1, 2008, the FCC released an order establishing new and burdensome leased access customer service, reporting, and recordkeeping regulations, and adopting a new formula for determining leased access rates. On May 22, 2008, the Sixth Circuit Court of Appeals granted NCTA's motion to stay the order pending review, finding that NCTA had "demonstrated some likelihood of irreparable harm" from the FCC's new regulations. NCTA had made the following arguments in favor of the stay:

- The FCC's new rate formula violates the leased access statute because it is insufficient to ensure that the operations, financial condition, and market development of cable systems will not be adversely affected.
- The low rates will lead to a dramatic increase in requests for leased access, requiring cable systems to replace other programming to accommodate the leased access users.
- The resulting disruption will result in customer dissatisfaction, causing some customers to seek video programming from other sources, such as DBS or wireless services.

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

**FCC Grants Broadcaster's Must Carry and Channel Position Complaint**

In two recent orders, the FCC granted a broadcaster's must carry and channel position complaint against Charter Communications.

On January 8, 2008, Entravision Holdings, licensee of Hartford, Connecticut commercial broadcast station WUVN, demanded must carry status on Charter's cable systems for the 2006-2008 election period. Entravision requested carriage of WUVN on channel 18, the station's over-the-air channel. Charter failed to respond to the must carry demand. Within 60 days of Charter's failure to respond, Entravision filed a must carry complaint with the Commission.

The Commission found that WUVN was entitled to carriage and ordered Charter to either carry WUVN on channel 18, or negotiate with WUVN for a mutually acceptable alternative channel. The Commission noted that "under the Commission's must carry rules, cable operators have the burden of showing that a commercial station that is located in the same television market as a cable operator is not entitled to carriage." In this case, Charter had not opposed the broadcaster's demand letter or complaint.

Cable operators ignore must carry demands at their peril. In some cases, a cable operator may deny a must carry demand on procedural or substantive grounds. If you have questions about your company's must carry obligations, please call Nicole Paolini-Subramanya or Emily Denney at (312) 372-3930.

### **FCC Upholds EAS Fine Against Eagle West Communications**

The FCC recently denied Eagle West's petition to reconsider a 2007 order imposing an \$8,000 forfeiture on Eagle West for its failure to install EAS equipment in its Mesa, Arizona cable system. Eagle West was originally fined by the FCC, after 2005 and 2006 inspections of the company's Mesa system revealed that Eagle West had purchased, but not installed, EAS equipment.

In its petition, Eagle West argued that the FCC should cancel or reduce the forfeiture because the company had since installed the EAS equipment. The FCC noted that Eagle West's subsequent compliance did not mitigate the company's failure to ensure that its EAS equipment was operationally ready in 2005 and 2006, and denied the company's petition.

If you have any questions about your company's EAS requirements, please call Nicole Paolini-Subramanya or Emily Denney at (312) 372-3930.

### **FCC To Convert Check Payments into Electronic Fund Transfers**

The FCC recently issued a Public Notice alerting regulated entities that, beginning June 27, 2008, any payments sent to the FCC by check will be converted into an electronic fund transfer ("EFT"). Under the new EFT procedure, payments will usually be withdrawn from the payor's checking account within 24 hours of receipt of the check by the FCC, so make sure there are sufficient funds available in your company's checking account when it sends a check to the FCC. If there are insufficient funds, the FCC may try to complete the transfer up to two additional times.

If you have questions about electronic fund transfers or FCC payments, please call Nicole Paolini-Subramanya or Emily Denney at (312) 372-3930.

### **Court Upholds FCC Decision on License Assignment Process**

In *Kay v. FCC*, the United States Court of Appeals for the District of Columbia Circuit recently upheld the FCC's decision to deny applications to assign two land mobile radio station licenses, because the licenses expired while the assignment applications were pending.

In 1996, James Kay applied to the FCC for approval of the assignment to him of two 5-year private land mobile radio station licenses. While Kay's applications were pending, both licenses expired. The FCC subsequently denied the applications on the ground that "a pending assignment application does not extend the expiration date of an underlying Commission license."

Kay appealed the FCC's denials to the DC Circuit, arguing that under the Administrative Procedures Act ("APA"), "[w]hen the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license... does not expire until the application has been finally determined by the agency." The Court of Appeals held that this tolling provision in the APA did not apply to Kay's applications for two reasons: First, Kay was not the licensee. Second, he was applying for approval of the assignment of the licenses - not for a "renewal or a new license." As a result, "his quarrel [was] properly with [the assignors], not the Commission."

License assignments can be tricky. We represent clients on a wide variety of license issues, including assignments and renewals. If you have any questions about your company's FCC licenses, please call Emily Denney at (312) 372-3930.

## **FY 2008 Cable Regulatory Fees**

The Commission has released its proposed Fiscal Year 2008 Regulatory Fees:

- **2008 cable regulatory fee:** \$0.80 per subscriber, a \$0.05 increase from 2007.
- **CARS licenses and permits:** \$205.00, a \$20 increase from 2007.
- **Interconnected VoIP regulatory fee:** \$0.00317 for each dollar of interstate and international telecommunications revenue that a provider reports on its Form 499-A.

Later this summer, the FCC will finalize the fees for FY 2008. We will let you know when the FCC releases the order. If you have any questions about regulatory fee payments, please call Scott Friedman at 312-372-3930.

## **Deadline Approaching for Copyright Forms and Fees**

Between July 1, 2008 and August 29, 2008, cable operators must file with the U.S. Copyright Office their Statement of Account (Form SA1-2 or SA3) and pay any royalty fees due for the January 2008 – June 2008 accounting period. The following forms apply:

- **SA1-2 Short Form.** For use by cable television systems with semiannual gross receipts of less than \$527,600.
- **SA3 Long Form.** For use by cable television systems with semiannual gross receipts of \$527,600 or more.

Copyright royalty fees must be remitted by electronic payment. If you have any questions about filing copyright forms, please call Chris Cinnamon or Scott Friedman at (312) 372-3930.

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Please visit our website at [www.cinnamonmueller.com](http://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.*