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CLIENT UPDATE
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We summarize below information that should be of interest to our clients in the cable television industry.

Armstrong Wins Market Modification Petition

The FCC recently granted Armstrong's petition to modify the market of WFMZ-TV (an Allentown, PA station) to exclude communities served by Armstrong's Oxford, PA headend. Armstrong filed the petition following WFMZ's filing of a must-carry complaint.

The Commission had previously denied four market modification petitions filed by other operators to delete WFMZ, but found that Armstrong had demonstrated that the subject communities lacked a sufficient nexus with WFMZ.

The FCC based its order on several criteria: None of the communities at issue were within WFMZ's Grade B contour, Armstrong's Oxford system did not carry any other Allentown stations, and, while WFMZ provided some programming directed to the county as a whole, the programming was not focused on the communities at issue. Finally, the Oxford system straddled the Pennsylvania/Delaware border and served a significant number of subscribers outside of WFMZ's DMA.

Cinnamon Mueller represented Armstrong in this matter.

If your company has any questions about market modification, please call Nicole Paolini-Subramanya or Emily Denney at 312-372-3930.

EAS Deadline for Digital Cable Systems

Your company's digital cable systems must be in compliance with the Commission's EAS regulations by December 31, 2006. The EAS obligations for digital cable systems are similar to those for analog systems:

- **Two-tone signal.** All digital cable systems must provide a two-tone signal to alert the audience before emergency messages and the required monthly test.
- **Encoder and decoder.** Digital cable systems with 5,000 or more subscribers must have an EAS encoder and decoder. Those with fewer than 5,000 subscribers must have an FCC-certified decoder.
- **Audio and video EAS message.** Digital cable systems with 5,000 or more subscribers must transmit audio and video EAS messages on all channels (or force tune to a channel carrying the video and audio messages). Digital cable systems with fewer than 5,000 subscribers must transmit audio and video EAS messages on at least one channel.
- **Video interrupt and audio alert.** Digital cable systems with fewer than 5,000 subscribers that do not transmit audio and video EAS messages on all channels must have a video interrupt and audio alert message on all channels.
- **Testing requirements.** The FCC's regulations contain detailed testing requirements applicable to digital cable systems.

For more information, please contact Nicole Paolini-Subramanya or Emily Denney at 312-372-3930.

Small Operators Use Market Modification to Level Retransmission Consent Playing Field

Market modification is most often used to exclude communities from a broadcast station's market. Two small operators in Oklahoma recently made creative use of the FCC's market modification mechanism to include their communities in a station's market in order to gain a choice of broadcast signals.

Broken Bow TV Cable Company and Pine Rural TV Cable Company serve a number of rural Oklahoma communities that were assigned to the Shreveport, Louisiana DMA. In the 2003 – 2005 retransmission consent election cycle, the companies obtained retransmission consent from KWTW, a CBS affiliate in the Oklahoma City, Oklahoma DMA. This time around, the stations were unable to obtain retransmission consent from KWTW because KWTW's affiliation agreement with CBS prohibited KWTW from granting out-of-market retransmission consent, even though the Shreveport CBS affiliate had no network nonduplication rights in the communities at issue. The Shreveport CBS affiliate refused to grant a waiver of the contractual restriction, so the operators filed a market modification petition to have their communities included in KWTW's market.

The FCC granted the petition. Among other factors, the companies had voluntarily carried KWTW via retransmission consent during the last retransmission consent cycle. The FCC stated that “[a] pattern of carriage, in the absence of a carriage obligation, is a strong indication of interest in a signal and of the signal's market connection to the communities in question.”

Market modification proceedings are complex and fact-specific. If you have questions about market modification, please call Nicole Paolini-Subramanya at 312-372-3930.

Cable Operator Allowed to Disconnect Bankrupt Subscriber

Section 366 of the federal Bankruptcy Code gives debtors protection from a utility cutting off service. The idea behind the provision is that utilities provide essential services, and a debtor should not be without essential services.

The Fifth Circuit Court of Appeals recently held that Time Warner was not a utility under this provision of the bankruptcy code, and did not have to continue to provide service to a customer who had filed for bankruptcy, even though the customer had offered to pay a deposit.

The Fifth Circuit agreed with the bankruptcy court that a “utility” was an entity with a “special position with respect to” a debtor, and whether an entity was in a “special position” hinged on whether the entity provided essential services to the debtor. The Fifth Circuit affirmed the bankruptcy court's holding that cable services were not essential services, and that Time Warner was therefore not a utility:

“The bankruptcy court...made a factual finding that cable television is not a necessity as it is not necessary to a minimum standard of living. Even [the debtor] himself admitted that cable service is only a convenience, not a necessity...Therefore cable service is not covered by Section 366 and Time Warner is not required to reinstate [the debtor's] service despite his offer of adequate assurances of future payment.”

This decision should give more flexibility to operators who wish to disconnect a customer in bankruptcy.

If your company has any questions about this case, please call Emily Denney at 312-372-3930.

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