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**CLIENT UPDATE**  
**February 23, 2009**

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**Form 477 Deadline Extended to March 16, 2009 – Form Now Available on FCC Website**

The Form 477 is now due **March 16, 2009**. Operators are required to include information about broadband connections and local telephone service as of December 31, 2008. The FCC has posted the new form and instructions on its website. To view the new form and instructions and sample screen shots, go to <http://www.fcc.gov/form477/>. You will need your FRN and password to file the form.

On the new Form 477, broadband providers must provide the following information:

- The number of broadband connections in individual census tracts, broken down by technology type and upload and download speed.
- The percentage of broadband connections that is residential.

Moreover, the Order requires interconnected VoIP providers to report the following information:

- The number of subscribers served (both end-user and resale).
- The percentage of subscribers that is residential.
- Whether the service is provided over a broadband connection provided by the filer or the filer's affiliate.
- A list of the 5-digit zip codes in which the filer has at least one subscriber.
- Whether the service is fixed or nomadic.

For information on census tracts, go to <http://www.fcc.gov/broadband/data.html>.

If you have any questions about the FCC Form 477, please call Scott Friedman at 312-372-3930.

**CPNI Officer's Certificate Due On or Before March 2, 2009**

The FCC's CPNI rules require that an officer of an interconnected VoIP provider annually file a certificate with the Commission stating that the officer has personal knowledge that the provider has established operating procedures that are adequate to ensure compliance with FCC's CPNI rules. The carrier must provide a statement accompanying the certificate explaining how its operating procedures ensure that it is in compliance with the FCC's CPNI rules. **The annual certificate for 2008 must be filed on or before March 2, 2009.**

The provider must also include, if applicable, an explanation of any actions taken against data brokers and a summary of all customer complaints concerning the unauthorized release of CPNI received in the past year. The interconnected VoIP providers' officer's certificates for data pertaining to the previous calendar year, as well as the information noted above, must be filed in EB Docket No. 06-36.

On January 7, 2009, and again on February 17, 2009, the FCC issued a Public Notice offering further guidance regarding the filing of the officer's certificate, including an acceptable sample form. Use of the sample form is not mandatory provided all required information is provided. All certificates must reference EB Docket No. 06-36.

If you have any questions regarding CPNI or the filing of the officer's certificate, please call Bruce Beard at 636-778-0646.

### **Copyright Forms and Fees Due March 2, 2009**

Cable operators should file with the U.S. Copyright Office their Statement of Account (Form SA1-2 or SA3) and pay any royalty fees due for the July 2008 – December 2008 accounting period by March 2, 2009. 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 copyright forms or fees, please call Heidi Schmid at 312-372-3930.

### **FCC Denies Cable Operator's Retransmission Consent Complaint**

The FCC recently denied a cable operator's retransmission consent complaint and petition for declaratory ruling. ATC Broadband, LLC and Dixie Cable TV, Inc. (collectively "ATC") claimed Gray Television Licensee, Inc., licensee of WSWG, Valdosta, GA ("WSWG"), failed to negotiate in good faith.

ATC sought permission to retransmit WSWG's signal because its transmitter is physically closest to ATC's systems. ATC serves communities in the Savannah, GA and Jacksonville, FL DMAs. WSWG is located in the Albany, GA DMA, and is not significantly viewed or historically carried in the communities served by ATC. In its complaint, ATC alleged that WSWG failed to negotiate in good faith for the following reasons:

- By abruptly ending negotiations due to a prohibition on out-of-market carriage in WSWG's network affiliation agreement;
- By failing to seek a waiver of this prohibition from CBS; and
- By generally failing to communicate with ATC.

Further, ATC argued that the affiliation agreement violated the network non-duplication rules.

The FCC disagreed with ATC's claims and denied the complaint under both the objective and subjective good faith tests, stating, "[e]ither party for out-of-market carriage has the right 'after evaluating the prospect of distant signal carriage, to reject the proposal and terminate further negotiation.'" The FCC also noted that WSWG claimed that it asked CBS Affiliate Relations if "CBS policy would permit WSWG to grant retransmission consent for carriage... by cable systems located outside the Albany, Georgia DMA," but was told that the position had not changed.

Moreover, the FCC denied ATC's network non-duplication claims as WSWG's affiliation agreement allows carriage of WSWG in the Savannah and Jacksonville DMAs if WSWG is significantly viewed or historically carried in those areas.

If you have any questions about retransmission consent matters, please call Heidi Schmid or Emily Denney at 312-372-3930.

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