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IF YOU HAVE QUESTIONS ABOUT THIS UPDATE, PLEASE CONTACT EMILY DENNEY AT 312-580-8288.

**CLIENT UPDATE**  
**January 25, 2005**

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**Independent Cable Operator**  
**Files Emergency Retransmission Consent Complaint**

As a glimpse of retransmission consent battles to come, last week an independent cable operator filed an Emergency Retransmission Consent Complaint with the FCC. The operator, Horry Telephone Cooperative, Inc. ("HTC"), alleged that the local Fox affiliate, WFXB, refused to grant HTC retransmission consent for WFXB's DTV signal. As a result, HTC would not be able to offer the Super Bowl and the Daytona 500 in HD. In a strong message to broadcasters, the FCC acted immediately.

According to the Complaint, the broadcaster refused to grant retransmission consent because it had entered into an "exclusive agreement" with Time Warner. HTC competes with Time Warner in a few franchise areas. As a result, HTC's competitor could deliver the Super Bowl and Daytona 500 in HD, while HTC could not.

HTC filed its Emergency Complaint on Tuesday, January 18. The Complaint alleged that the broadcaster violated two FCC regulations – the prohibition against exclusive agreements, and the obligation to negotiate retransmission consent in good faith. Because the Super Bowl and the Daytona 500 were only days away, HTC asked for expedited action.

The FCC responded the next day. In a January 19 Public Notice, the FCC ordered the broadcaster to respond in five days. The Public Notice stated, "Because of the significance and time sensitive nature of HTC's allegations, we see good cause to establish an accelerated pleading cycle in this matter so that it can be resolved in an expedited manner."

The case settled, and HTC withdrew the Complaint. Cinnamon Mueller represented HTC in this case.

**FCC Notice Requirements**

FCC regulations contain extensive notice requirements. Some of the requirements depend on the size of your company. For example, the FCC requires that when a cable system reaches 1,000 subscribers, it must provide written notice to the FCC for non-duplication and syndex purposes. Typically, the cable operator must also serve a copy of the notice on all television stations that would be entitled to exercise network non-duplication or syndicated exclusivity.

Other notice requirements are triggered by operational changes or special offers. For example, when you change your principal headend designation, you must notify all

broadcast stations. If you provide a premium channel without charge, you must give 30 days prior notice of the "free preview" to subscribers who do not subscribe to the channel.

The above are intended only as examples of your notice obligations under the FCC's rules. We are advising many cable operators on how to efficiently comply with their notice obligations under the FCC rules and regulations. Please call Emily Denney at 312-372-3930 for more information.

### **FCC Form 477 – Due March 1**

The Local Competition and Broadband Reporting Form 477 is due March 1, 2005, and is now available electronically on the FCC's website. Facilities-based providers that provide at least 250 one-way or two-way broadband connections to end users in a given state must file a Form 477 for that state. Obtain the form at <http://www.fcc.gov/formpage.html#477>. Non-facilities-based providers of Internet access service should not report broadband subscribers on Form 477.

### **FCC Form 325**

We have received many calls from clients about the FCC's Form 325. The FCC is currently in the process of mailing out notifications to systems that are required to submit the form. Notifications will be sent to all cable operators with 20,000 or more subscribers and to a random sample of systems with less than 20,000 subscribers. Only operators receiving the notification through the mail and only those systems identified are required to file.

If you are slated to receive a notice, you will receive a notification letter some time in the next couple of weeks. You must complete the form within 60 days after receipt.

### **RETRANSMISSION CONSENT 2005... START PREPARING AT THE NCTC WEC**

As we mentioned in our last update, the next retransmission consent round is only 10 months away. There is plenty you and your company can do to prepare for these tough negotiations. For starters, we encourage you to attend the NCTC's Winter Educational Conference in San Antonio on January 31 – February 1, 2005. Chris Cinnamon will be speaking on retransmission consent and other broadcast signal carriage issues. NCTC has put together a great line-up of valuable sessions. Go to <http://www.cabletvcoop.org/meetings/wec2005/> and call NCTC at (913) 599-5900 for more information.

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Please visit our website at [www.cm-chi.com](http://www.cm-chi.com) to learn more about our lawyers and practice. You can reach Cinnamon Mueller at 312-372-3930.

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