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**CLIENT UPDATE**  
**June 22, 2005**

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**Leased Access Activity**

The Cable Act and FCC regulations require cable operators to make channel space available for commercial programming that the cable operator might not otherwise want to carry. Known as "leased access," compliance with these regulations presents operational and administrative burdens for cable operators. Leased access programmers can obtain valuable and scarce capacity on cable systems at a regulated rate, and can demand a full channel or part-time access of as little as one-half hour. They can also lease capacity and resell it. Recently, we have seen an increase in leased access activity among small and medium sized cable companies.

A key step in managing leased access compliance is having a comprehensive leased access contract. The contract should address a range of terms and conditions of leased access, including insurance requirements, equipment charges and technical support costs. The FCC has ruled in a number of instances that cable operators can impose reasonable requirements in these areas as conditions of leased access.

Just this month, the FCC issued an order holding that Time Warner could charge technical support fees to leased access programmers (the fees ranged from \$24.90 - \$37.37 per hour), even though Time Warner did not charge itself technical support fees for the local origination programming it transmitted on its system.

If your company is facing leased access demands, a solid contract will help ensure that you maintain maximum control and obtain full value for your channel capacity. If you have questions about leased access, or would like to put in place a leased access agreement, please call Nikki Paolini-Subramanya at 312-372-3930.

**FCC's Reciprocal Bargaining Order**

In response to legislation passed last year extending the DBS compulsory copyright license, the FCC released an order making changes to the retransmission consent good faith negotiation regulations. We summarize highlights of that order below.

**Good faith provisions extended to cable operators.** The good faith regulations previously only applied to broadcasters. The FCC's order now extends those regulations to cable operators and DBS. If a broadcaster believes that a cable operator is not negotiating in good faith for the retransmission of a broadcast signal, the broadcaster may file a complaint at the FCC.

**Good faith provisions apply on both sides of the DMA.** Agreeing with the American Cable Association, the Commission also concluded that the obligation to negotiate in good faith applies to retransmission consent negotiations between broadcasters and video providers regardless of the DMA in which they are located. In other words, the obligation to negotiate in good faith attaches to all retransmission consent negotiations regardless of where a broadcaster is located – good faith negotiation obligations apply to both in-market and out-of-market negotiations.

While the good faith provisions apply to both sides of the DMA, it is important to emphasize an important point – although the reciprocal bargaining obligations apply without geographical limitation, this does not mean that now all broadcast signals are created equal. There are still key differences between in-market and out-of-market broadcast signals. For example, the mandatory carriage/retransmission consent option applies only to carriage within a broadcaster's DMA.

**Cable operators are not obligated to carry multicast signals.** Another issue raised by ACA in the proceeding was the concern about carriage of multicast DTV programming. ACA advocated that it should not violate the good faith rules for a cable operator to decline to carry a broadcaster's multicast programming. The Commission agreed. "The reciprocal bargaining obligation neither requires nor prohibits the carriage of a broadcaster's entire free signal." The Commission affirmed that these are bargaining proposals which a cable operator is free to accept, reject, or counter with a proposal of its own.

If you have any questions about the Commission's recent order, or about retransmission consent in general, please call Chris Cinnamon or Emily Denney at 312-372-3930.

### **FCC Adopts New Rules on VoIP and 911/E911 Services**

Cable operators providing VoIP services will soon need to provide 911/E911 services.

In May, the FCC adopted new rules requiring providers of "interconnected VoIP services" – any VoIP service that originates or terminates on the public switched telephone network ("PSTN") – to provide 911/E911 services. Interconnected VoIP providers must provide E911 from wherever the customer is using the service, whether at home or away from home. In short, a provider must:

- Obtain from the customer the location at which the VoIP service will first be utilized ("Registered Location").
- Specifically advise every customer of the circumstances under which E911 service may be limited or unavailable, for example, when the customer relocates the VoIP CPE, when the customer uses a non-native telephone number, loss of electrical power, etc.
- Obtain and keep a record of acknowledgement by every customer that they have received the above information.
- Distribute warning stickers to new and existing customers if the E911 service may be limited or unavailable.
- Transmit all 911 calls (as well as the caller's phone number and the caller's Registered Location, if the PSAP provides E911 functionality) to the PSAP that serves the Registered Location. Providers can satisfy this requirement by interconnecting through a third party provider like a CLEC, Net2Phone or Level 3, connecting directly with the wireline E911 network, or through any other solution that allows the provider to offer E911 service.
- Provide the customer a way to update the Registered Location at will, including updating using only the CPE.
- Submit a letter to the Commission detailing compliance with the rules.

The new rules should go into effect by the end of the year. If you have any questions about providing VoIP services, please call Nikki Paolini-Subramanya at 312-372-3930.

### **Cinnamon Mueller News**

**Nikki Paolini-Subramanya named partner of the firm (and gets married!).** We congratulate Nikki Paolini-Subramanya on becoming a partner of the firm. A 1990 graduate of Tulane Law School, Nikki has practiced at Cinnamon Mueller for 3 ½ years. She will continue to head the firm's litigation practice group and advise clients on telecommunications and cable regulatory matters. Nikki also recently married her husband, Mahesh Subramanya, a transcontinental event that included ceremonies in India and Chicago. Congratulations to Nikki Paolini-Subramanya!

**Karl Moltzen joins the firm.** Karl Moltzen joined Cinnamon Mueller in May of 2005. Karl is a 2000 graduate of the John Marshall Law School and will assist the firm's cable and telecommunications clients in regulatory and transactional matters. Before joining Cinnamon Mueller, Karl practiced with the Chicago firm of Levenfeld Pearlstein, representing telecommunications and commercial real estate clients.

### **Recent and Upcoming Speeches and Presentations**

- Chris Cinnamon, April 11, 2005, FCBA Legal Update, Must Carry and Retransmission Consent, Washington, DC
- Chris Cinnamon and Emily Denney, June 16, 2005, Cable Compliance Update (in-house client seminar)
- Nikki Paolini-Subramanya, June 16, 2005, Small System Update, SCTE Annual Meeting, San Antonio
- Chris Cinnamon, August 1, 2005, Cable Regulatory Update, ACA Annual Members Meeting, San Diego, CA,
- Chris Cinnamon, August 2, 2005, Retransmission Consent Update, NCTC Annual Member Meeting, San Diego, CA
- Chris Cinnamon, August 25, 2005, "Surviving the 7th inning stretch: Retransmission Consent", Mid-America Cable Show, Overland Park, KS
- Chris Cinnamon, November 14, 2005, Retransmission Consent and the Need for Reform, NTCA Legal Update, Tucson, AZ

**Theft of Service litigation.** Cinnamon Mueller obtained an order of summary judgment against the defendant in a theft of service case in federal district court in Alabama. Nikki Paolini-Subramanya and Chris Cinnamon represented the cable operator.

**DBS distributor litigation.** Cinnamon Mueller obtained a county-wide permanent injunction against a DBS distributor that had cut into the cable operator's home run wiring in MDUs. Following a bench trial, the court granted the cable operator a permanent injunction prohibiting the satellite installer from using the home run wiring. Nikki Paolini-Subramanya, Chris Cinnamon, and Ly Chhay represented the cable operator.

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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. 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 Client Update.