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## **CLIENT UPDATE**

**August 6, 2004**

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We summarize below key developments of interest to our clients in the cable television industry.

### **COMBATTING CABLE THEFT**

Industry analysts estimate that cable theft costs operators over \$1 billion annually. Cable operators have a number of options for combating cable theft:

**Customer notices.** Your company should incorporate theft of service notices in its subscriber agreement, website, and annual subscriber notices. You should also consider cablecasting anti-theft announcements. These efforts have two principal purposes: (i) disseminating the law and your company's policy concerning cable theft and (ii) providing supporting evidence in litigation that the cable thief knew that reception of your services was unauthorized.

**Prosecution.** Federal, state, and local laws all provide remedies against cable theft. Section 553 of the Cable Act is the primary weapon against cable thieves. A number of operators have successfully pursued cable thieves in court under this statute.

Criminal penalties under Section 553 include fines of not more than \$1,000 and imprisonment of not more than six months. In case of a willful violation for commercial advantage or private financial gain, penalties are harsher – for a first offense, fines of not more than \$50,000 and imprisonment of not more than two years; for subsequent offenses, fines of not more than \$100,000 and imprisonment of not more than five years. In addition to criminal penalties, the Cable Act provides for civil actions in federal district court or any state court with jurisdiction.

Cinnamon Mueller is working with a number of operators on cable theft issues. We can help you implement a comprehensive cable theft deterrence program for your company, and can serve as a resource for your staff and local counsel to help develop litigation strategy and assist with case preparation. Call Nicole Paolini at 312-372-3930 for further information on combating cable theft.

### **HOME WIRING AND HOME RUN WIRING IN MDUs**

Competition for MDU subscribers is fiercer than ever before. The FCC's inside wiring regulations provide detailed procedures for the disposition of inside wiring when MDU owners or subscribers change MVPDs. These procedures are often confusing, and if they are not followed to the letter, your company can lose its rights to compensation for, or access to, inside wiring. If you have questions about what to do when a subscriber terminates service, or if you have recently gained or lost access to an MDU, call Nicole Paolini or Christopher Cinnamon at 312-372-3930.

## **POINT-OF-DEPLOYMENT COMPLIANCE REMINDERS**

**The following rules are now in effect:**

- For all customers who request it, you must provide a STB with IEEE 1394 interface technology.
- All digital cable systems must now comply with certain SCTE and ANSI technical standards to support use of Point-of-Deployment (commonly referred to as “PODs”, they are security access cards that allow access to cable programming).
- If your system is 750 MHz or more, your system must now comply with additional SCTE and ANSI technical standards.

You can purchase the SCTE and ANSI technical requirements from the following websites:

[www.scte.org/standards/index.cfm](http://www.scte.org/standards/index.cfm)  
[webstore.ansi.org/ansidocstore/default.asp](http://webstore.ansi.org/ansidocstore/default.asp)

**Other DTV compliance requirements.** Cable operators cannot use selectable output control to selectively turn off particular analog or digital programming. Also, cable operators cannot engage in down resolution of broadcast programming.

**Waivers may be available.** The FCC has said that small cable operators that face economic hardship in complying with these rules may apply for a waiver. The FCC will review waiver requests on a case-by-case basis.

## **PUBLIC FILE UPKEEP**

When a cable operator reaches 1,000 subscribers, several FCC cable regulations are triggered. The most onerous are the proof of performance testing and public file record keeping requirements:

**Proof of performance testing.** At least twice a year (no more than seven months apart) a cable operator with 1,000 or more subscribers on a system must conduct proof-of-performance testing at six widely separated locations on the system.

**Public File.** A system with 1,000 or more subscribers must maintain the following records for public inspection:

- Political advertising records (if any)
- Sponsorship identification records (if any)
- EEO records (extent of records depends on number of employees)
- Children’s advertising records
- Proof of performance test data
- Signal leakage logs and repair records
- List of channels carried
- Aggregated customer signal quality complaint records
- Commercial leased access records

**In addition, an operator with 1,000 or more subscribers is subject to certain non-duplication and syndex requirements.** 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.

## **MANDATORY ELECTRONIC FILING**

The FCC Media Bureau announced mandatory electronic filing through the cable operations and licensing system (COALS) for the following FCC forms beginning February 1, 2005:

- Form 320 – Basic Signal Leakage Report
- Form 322 – Cable Community Registration
- Form 324 – Operator, Mail Address, and Operational Information Changes
- Form 325 – Annual Report of Cable Television Systems

## **UPCOMING DEADLINES**

**Regulatory Fee Payments**. As we reported to you last month, 2004 Regulatory Fees are due no later than August 19, 2004. When filing your regulatory fees this year, please remember the following important guidelines:

- Regulatory Fees are \$0.70/subscriber and CARS licenses are \$135.
- All regulatory fee payments must be received at the Commission's Pittsburgh, Pennsylvania address or via the FCC's website Fee Filer by 11:59 PM on August 19, 2004 to avoid being assessed a 25% penalty.
- All payments must include an FCC Registration Number (FRN).
- For more information, access the FCC's website at [www.fcc.gov/fees/regfees.html](http://www.fcc.gov/fees/regfees.html).

On August 20, 2004, the Commission will begin an aggressive effort of contacting FY 2004 non-payers. Non-payers will be charged full payment, plus a 25% penalty of the amount of the required regulatory fee.

**Copyright Statements of Account**. Copyright Statements of Account for the January-June accounting period are due between July 1 and August 29, 2004. The following forms are used:

SA1-2 Short Form - For use by cable television systems whose semiannual gross receipts are less than \$379,600

SA3 Long Form - For use by cable television systems whose semiannual gross receipts are \$379,600 or more

To make your payment online, go to [www.copyright.gov/licensing/royalty](http://www.copyright.gov/licensing/royalty).

**FCC Form 477 (Local Competition and Broadband Reporting Form)**. FCC Form 477 is due September 1, 2004. 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. Non-facilities-based providers of Internet access service should not report broadband subscribers on Form 477.

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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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