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## ***CLIENT UPDATE***

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

### **RECENT CASE LAW AFFECTING CABLE OPERATORS AND CABLE MODEM SERVICES**

**Cable Modem Consumer Class Action Dismissed.** A Michigan Circuit Court's recent decision in *Barry Mentzel v. Comcast, Inc.*, underscores the importance of a properly drafted customer agreement and Acceptable Use policy. In the consumer class action, a Comcast subscriber sought a credit for the loss of his Internet service, which was interrupted for 6 months due to the bankruptcy of [Excite@Home](#). Comcast had in place an express contract governing the relationship between the cable provider and Internet customers. This agreement spelled out company policy dealing with outages and credits. The subscriber did not adhere to the policy, and the court dismissed the complaint. This case is important for systems that provide cable modem service – if you have clear subscriber policies in place, it will be difficult for a subscriber to bring an action against your company outside the boundaries of that agreement.

**Court Holds No Franchise Fees on Telecommunications and Cable Modem Service.** In *Parish of Jefferson v. Cox Communications Louisiana*, a Federal District Court ruled that Cox did not have to pay franchise fees on revenue derived from telecommunications and cable modem services. Jefferson Parish argued that its Franchise Agreement with Cox contemplated inclusion of telecommunications and cable modem service fees. Based on certain 1996 amendments to the Cable Act and the FCC's Declaratory Ruling on the definition of cable modem service, the court agreed with Cox that federal law preempted the agreement.

### **SMALL SYSTEM EAS UPDATE**

Systems serving fewer than 5,000 subscribers must now have EAS equipment installed and in operation, or have filed for a temporary waiver of the deadline. Although the FCC has not granted any permanent waivers for smaller systems, we have had consistent success in obtaining waivers for many operators that cannot afford the equipment at this time.

In a recent order, the FCC clarified that waivers will not transfer with systems that are sold to another entity. This means that if you buy a small system, you will need to either re-file for a temporary waiver, or install the equipment.

If you are unable to purchase EAS equipment at this time, filing a waiver with the Commission is the best way to protect your company against sanctions and fines. Operators that have not installed equipment or obtained a waiver may face enforcement actions, which may result in fines of up to \$9,000 per headend.

## **CHANGES IN FCC FORMS**

**Form 320.** The FCC will no longer mail Form 320s; cable operators must download the form at the FCC's website. The FCC has also streamlined the filing requirements. Previously, cable operators had to file a separate Form 320 for each community unit, essentially each franchise area. Cable operators now may file the forms for each PSID. Remember – Cumulative Leakage Index testing must be performed once a year and at intervals of no more than 12 months apart. A Form 320 must be filed within 45 days of testing completion.

**Form 325 (Annual Report).** The Commission mails Form 325 to cable operators, which must complete and return the form within 60 days after receipt. Copies of the form will be sent to all cable systems that serve 20,000 or more subscribers, and to a random sample of systems with less than 20,000 subscribers. Only system operators receiving a copy of the form through the mail and only those systems identified by the Physical System Identifier on the form received are required to file the form.

**Form 396-C (EEO Reporting).** See below.

## **UPCOMING DEADLINES**

**Copyright fees are due August 29.**

**Cable regulatory fees are due September 24.**

The Commission's regulatory fee for 2003 is \$0.66 per subscriber in each community unit where a cable business operates. Payments must be accompanied by an FCC Registration Number (see below) and a Form 159. Be aware that late payment penalties are steep – 25% of the amount of the required regulatory fee. Penalties are assessed on the first day following the deadline date for fees. Cable operators must also pay a \$90.00 fee for each CARS microwave license and a \$10 fee for each broadcast auxiliary service license.

**EEO Annual Reports are due September 30 – New FCC Form-C.**

In discussions with FCC staff, we have learned that the new EEO Form 396-C will be released shortly. The FCC's new EEO rules require that cable operators adopt and comply with an EEO program focused on outreach, and file an annual report of its EEO initiatives. The most significant change is that the new form does not require specific workplace demographic data. Once released, the new Form 396-C will be available for electronic download and electronic filing. We will keep you posted on the availability of the new Form 396-C.

**FCC Registration Number Reminder.** Every person and entity that wishes to obtain a license, certificate, or submit FCC Form 159 must obtain a unique identifying number called the FCC Registration Number (FRN), and supply this number when doing business with the Commission. The FRN can be immediately obtained and modified over the Internet through the Commission Registration System (CORES) at <https://svartifoss2.fcc.gov/cores/CoresHome.html>. Before registering, we recommend that you determine if your entity presently has an FRN, by performing a registrant search.

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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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