



**FLEISCHMAN  
AND  
HARDING LLP**

May 23, 2008

**MEMORANDUM TO CLIENTS**

**Re: Federal Court Stays Implementation of New Leased Access Rules.**

As you may have heard, on Thursday afternoon, the United States Court of Appeals for the Sixth Circuit unanimously granted NCTA's motion for a stay of the FCC's new leased access rules pending completion of appellate review. The effect of the stay is to relieve cable operators from having to comply with any of the FCC new leased access rules, including the new "marginal implicit rate" formula, the customer service information rules, and the annual report rules.

NCTA and others have challenged the leased access rules on the grounds that they violate the Communications Act, the Administrative Procedure Act, and the Constitution. While the ultimate outcome of the case cannot be forecast from the decision to grant a stay, it is encouraging that the court found that NCTA "has raised some substantial appellate issues" and that a stay was warranted because of NCTA's "potential of success on the merits," together with the likelihood of irreparable harm if the rules were allowed to go into effect while they were still being reviewed.

The Court also rejected a request that it transfer the case to the Court of Appeals for the District of Columbia and directed that the case be scheduled for expedited consideration. It is not clear at this time how quickly the case will be briefed and argued and how quickly a decision will be issued. However, in light of the court's ruling, cable operators will not have to begin complying with any of the new rules, which were scheduled to go into effect upon approval by the Office of Management and Budget, unless and until they are upheld by the court of appeals, even if the OMB approves the rules prior to the court's decision.

Please contact us if you have any questions regarding any aspect of the new leased access rules.

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