

October 2009

FCC Settles Forfeiture Action With Time Warner Over Changes To Service

On September 30, 2009, the Enforcement Bureau of the Federal Communications Commission entered into a Consent Decree with Time Warner Cable (“TWC”) for its failure to provide local franchise authorities (“LFAs”) in Hawaii with adequate notice that it was moving some channels to a switched digital video tier. Pursuant to the terms of the Consent Decree, TWC will make a \$25,000 “voluntary contribution” and will file a compliance report with the Commission on October 1, 2010. TWC will also withdraw its July 27, 2009 Petition seeking reconsideration of the finding of liability and the forfeiture. The Commission, in turn, will terminate its investigation.

The Commission’s investigation of this matter dates back to 2007. On August 22, 2008, the Bureau issued a Notice of Apparent Liability for Forfeiture for TWC’s apparent violation of Section 76.1603(c) of the Commission’s rules, which require at least 30 days advanced written notice to the relevant LFA before making any change in service. On January 19, 2009, the Commission issued a Forfeiture Order, assessing a \$7500 fine. On February 18, 2009, the parties entered a Tolling Agreement to provide additional time for discussions regarding the facts surrounding the possible section 76.1603 violations. On June 26, 2009, the Commission released its Order on Review, affirming its findings and forfeiture, of which TWC immediately sought reconsideration.

This action illustrates that the Commission is serious about its notice requirements. Cable operators should be mindful of this standard as they continue to deploy advanced digital offerings to customers and take care to provide adequate notice to the relevant LFA prior to moving channels to the digital tier. Please contact one of Womble Carlyle’s cable attorneys if you have any questions regarding the section 76.1603 notification requirements or actions constituting a change in service.

If you have any questions regarding the content of this Client Alert, please contact [Mark Palchick](#), or any member of the firm’s [Communications Law Group](#).

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