

To: All Television Clients

October 8, 2008

FCC Issues Declaratory Ruling Regarding Rules Governing Television Network/Affiliate Relationships

In 2001, the Network Affiliated Stations Alliance (“NASA”) filed a *Petition for Inquiry Into Network Practices* (the “Petition”) and subsequently a *Motion for Declaratory Ruling* asking the FCC to determine whether certain alleged practices of ABC, CBS, NBC and Fox Television Networks (the “Networks”) were consistent with the Commission’s network rules, the Communications Act, and the public interest. The Networks subsequently reformed their contracts to address the central issues raised by NASA.

On June 9, 2008, NASA and the Networks filed a *Joint Request of NASA and the Networks to Resolve NASA Petition* (the “Joint Request”). In the Joint Request, the parties stated that although standard affiliation agreements had been revised to address the issues raised earlier by NASA, the parties desired to avoid future controversies regarding the meaning of the FCC’s network/affiliate rules, and to assure that the rules regarding network/affiliate relationships are clear. The parties requested clarification of three issues: (i) Licensee Control; (ii) Right-to-Reject Rule; and (iii) Option-Time Rule.

On September 3, 2008, the FCC issued a *Declaratory Ruling* addressing the three issues raised in the Joint Request.

Licensee Control

The FCC affirmed that network affiliates, as the licensees of local television stations, must retain ultimate control over station programming, operations and other critical decisions with respect to their stations, and network affiliation must not impair this basic control.

Right-to-Reject Rule

The FCC affirmed the “Right-to-Reject Rule,” which prohibits television stations from entering into any contract with a network that prevents or hinders the station from rejecting or refusing network programs that the station reasonably believes to be unsatisfactory or unsuitable or contrary to the public interest, or from substituting a program that, in the station’s opinion, is of greater local or national importance. The FCC stated that network affiliation agreements should not include provisions that:

- limit Right-to-Reject preemptions for greater local or national importance to breaking news events or any other specific type of programming;
- prevent affiliates from rejecting a program as “unsatisfactory or unsuitable or contrary to the public interest” because they have carried a similar network program in the past;
- impose monetary or non-monetary penalties on affiliates based on preemptions protected by the Right-to-Reject Rule; or
- subject Right-to-Reject preemptions to, or count such preemptions against, contractual preemption limits or “baskets,” although baskets are appropriate for preemptions not protected by the Right-to-Reject Rule.

Option-Time Rule

The “Option-Time Rule” prohibits clauses in affiliation agreements that prevent or hinder stations from scheduling programs before the network agrees to utilize the time during which such programs are scheduled, or that require stations to clear time already scheduled when the network seeks to utilize the time. In its Petition, NASA alleged that certain contract provisions violated the Option-Time Rule by allowing networks to receive an option to use an affiliate’s broadcast time without committing to supply programming for the optioned time. The FCC affirmed that affiliation agreements should not:

- include provisions that result in the optioning of the station’s time to the network or that have the same restraining effect as time optioning;
- obligate stations to carry a network’s programming or other content during certain time periods without reciprocally obligating the network to provide the content for those time periods; or
- require affiliates to carry, at some unspecified future date, unspecified digital content that the stations may or may not choose to offer.

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Should you have any questions concerning any of the issues raised in the Declaratory Ruling, or if you have any other questions regarding network affiliation rules, please contact an attorney in our office.

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