SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: Hon. Jacqueline Silbermann
Administrative Order

DIANET COMMUNICATIONS, LLC,

Petitioner,

- v - INDEX NO. 107805/2008

FRANCHISE AND CONCESSION REVIEW COMMITTEE OF THE CITY OF NEW YORK, et al.,

Respondents.

DIANET COMMUNICATIONS, LLC,

Plaintiff,

- v - INDEX NO. 107862/2008

THE CITY OF NEW YORK,

Defendant.

Administrative Order:

By letter dated August 15, 2008, counsel for petitioner/plaintiff Dianet Communications, LLC (Dianet) applies for a transfer of the above-captioned Article 78 proceeding and related plenary action to the Commercial Division pursuant to Uniform Rule 202.70. The Court has not received any objection to the request.

It was Dianet's counsel who filed the first Request for Judicial Intervention (RJI) back on June 4, 2008 in connection with the Article 78 proceeding. Rather than marking the case as "Other Commercial" in accordance with the instructions set forth in Uniform Rule 202.70(d)(1), Dianet's counsel checked the "Special Proceedings - Art. 78" box. Accordingly, it was assigned to a non-commercial judge, the Hon. Kibbie F. Payne. Likewise, when the City of New York filed an RJI in the related plenary action on June 15, 2008, that action was properly assigned to Justice Payne as a related matter. The Uniform Rules do not provide for a second chance to the party that filed the RJI to

correct their error. Rather, Rule 202.70(e) is clear that the right to appeal an RJI designation is limited to "any other party." Since Dianet originally attempted to file a single set of consolidated pleadings under one Index No. for both cases and always believed that they were closely related, they should have taken the necessary steps to place the cases into the Commercial Division in the first instance.

In addition, this application is well past the 10-day time limit provided in Uniform Rule 202.70. The recusal of Judge Payne on August 15, 2008 does not justify a transfer of either case into the Commercial Division at this point in time.

For these reasons, Dianet's request for a transfer of both cases into the Commercial Division is denied. However, although the Article 78 proceeding was re-assigned to the Hon. Eileen A. Rakower on August 19, 2008, it does not appear that an order of recusal has been filed in the plenary action. Accordingly, the Trial Support Office is directed to re-assign Dianet Communications, LLC v. The City of New York, Index No. 107862/08, to Justice Eileen A. Rakower (I.A.S. Part 5).

Dated: August 21, 2008 ENTER: _____, A.J.

Check one: ❑ FINAL DISPOSITION ❑ NON-FINAL DISPOSITION