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FCC Requires Cable Systems to Format Must-Carry Signals to Ensure “Viewability” on Both Analog and Digital Televisions After the Termination of Analog Broadcasts in 2009

At a late-night meeting on September 11, 2007, the Federal Communications Commission (“FCC”) adopted a “viewability” rule that will govern cable carriage of must-carry stations after analog broadcasting terminates in 2009. The rule requires cable operators to deliver the primary digital stream of a must-carry television station in a manner that will permit it to be viewed by all cable subscribers after the transition to digital television occurs on February 17, 2009. Specifically, cable operators will be required to carry the primary digital stream of a must-carry station, and will be required to either provide the digital signal in analog format as well, or carry the signal only in digital format, but ensure that all subscribers have the necessary equipment to view the broadcast content on their particular television.

In its Order (which has not yet been released), the FCC reaffirmed the requirement that cable systems carry broadcasters’ high definition (“HD”) signals in HD format. However, the FCC indicated that some degree of signal compression could be used in distributing the broadcaster’s signal, as long as the resulting picture quality is at least as good as that of any other programming carried on the cable system. This requirement is intended to prevent cable operators from favoring their own or other programming over that of a broadcaster.

In a political compromise that permitted the new rule to garner the support of all five commissioners, the FCC determined that the dual-format carriage requirement will sunset in February 2012. However, the FCC stated that it would review the state of cable carriage of digital signals prior to that time and decide then whether the requirement should be extended for a longer period of time. The FCC also indicated that it is

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willing to entertain waiver requests from small cable systems where dual-formatting would be unduly burdensome, and would be initiating a further proceeding to examine ways in which the economic impact of the rule on small cable systems could be minimized without undercutting the rule's purpose.

While not mentioned in the FCC's news release regarding the decision or in related press reports, the FCC's Media Bureau indicated at the meeting adopting the rule that the FCC will be initiating further proceedings to address whether the FCC's restrictions on degradation of picture quality should also be applied to stations carried pursuant to a retransmission consent agreement, as well as to define broadcasters' channel positioning rights on cable systems after the transition to digital television is completed.

We will continue to monitor these matters and will issue a subsequent Client Alert once the text of the FCC's decision is released.

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