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To: All Television Clients

December 28, 2007

FCC RELEASES THIRD REPORT AND ORDER AND THIRD FURTHER NOTICE OF PROPOSED RULEMAKING IN THE MATTER OF CARRIAGE OF DIGITAL TELEVISION BROADCAST SIGNALS

The FCC recently issued its Third Report and Order and Third Further Notice of Proposed Rulemaking in the Matter of Carriage of Digital Television Broadcast signals (“R&O”) clarifying the responsibilities of cable television operators with respect to the carriage of television broadcasters’ signals as a result of the digital television (“DTV”) transition. According to the FCC, the new rules will ensure that cable subscribers will continue, after the February 17, 2009 end date of the DTV transition, to be able to view the signals of broadcast stations at the same level of quality in which they are delivered to the cable systems.

The R&O imposes material degradation limits on cable operators and provides two alternative approaches that cable operators may use to satisfy their responsibility to ensure that cable subscribers with analog television sets can continue to view all must-carry stations after the end of the DTV transition.

Material Degradation

The R&O codifies material degradation standards previously proposed by the FCC and establishes a standard for assessing material degradation. The FCC adopted a comparative approach to assess whether a must-carry broadcaster’s digital signal has been materially degraded. Specifically, a cable operator may not provide a broadcast signal in a lesser format or lower

resolution than that afforded to any other signal on the cable operator’s system. Furthermore, there should be no perceivable difference to the viewer between the broadcast signal delivered to the cable operator and the signal delivered by the cable operator. This approach is consistent with the FCC’s rule that high-definition broadcast signals delivered to the cable operator must be delivered to cable subscribers in high-definition. The material degradation standard set forth in the R&O applies only to a broadcaster’s primary video and program related content and not to any secondary channels.

Availability of the Signal

The R&O also establishes availability guidelines for cable operators after the end of the DTV transition. Cable systems that are not “all digital” (i.e. that are providing both analog and digital cable services) will be required to deliver must-carry signals in an analog format to analog subscribers. This requirement does not apply to stations that have entered into retransmission consent agreements since carriage of these stations will be based on the private agreements between the parties. For subscribers that do not have the capability of viewing digital signals, such systems must carry the signals in analog format after downconverting them (at the cable operator’s expense) from their original digital format at the headend. Downconverted analog signals may count



toward the cap on commercial broadcast carriage. In situations where an operator uses digital-to-analog converter boxes that do not have analog tuners, the cable operator can deliver a standard-definition digital version of a must-carry broadcaster's high-definition digital signal, in addition to the analog and high-definition signal, or use boxes that convert high-definition signals for viewing on analog television sets, or use other technical solutions so long as cable subscribers have the ability to view the signals.

"All digital" cable systems will only be required to deliver must-carry broadcast signals in digital form, provided that subscribers with analog television sets have the necessary equipment to view the broadcast content.

These signal availability rules will be in place for three years following the digital transition date (*i.e.*, until February 17, 2012). The rules will be reviewed by the FCC in the final year of the enforcement period between February 2011 and February 2012.

According to the FCC, the signal availability rules give cable operators the freedom to choose how to ensure that must-carry signals are viewable by all subscribers, and does not require carriage of more than one broadcast signal from a given must-carry broadcaster or require carriage of an analog version of a digital signal unless a cable operators does not operate an "all-digital" system. Cable

operators who choose to transition their systems to "all-digital" must provide written notice to subscribers about the switch containing any information the subscribers need or actions they will have to take to continue receiving service.

Further Comment

In the R&O, the FCC seeks comments on implementation of the new rules discussed herein. Specifically, the FCC requests comments on how channel placement might be affected by the carriage of digital and downconverted analog signals on a single cable system, as well as the feasibility of aspect ratio conversion of high-definition broadcast signals (16:9) to the analog aspect ratio (4:3). Additionally, the FCC solicits comments on the application of these rules to signals carried pursuant to retransmission consent agreements and whether current notice requirements are sufficient if a cable operator elects to go "all digital". Finally, the FCC inquires about the potential impact of the new rules on small cable operators.

If you have any questions concerning these new rules, or wish to participate in the further comment portion of this proceeding, please contact any attorney in our office.

Leventhal Senter & Lerman PLLC

This memorandum is intended only as a general discussion of these issues and should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired. To discuss any of the issues presented here, please contact any attorney in our office.