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Satellite Carriage Elections Due October 1 . . . or so Impending DTV transition adds wrinkle to timing of carriage notifications

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In April we alerted you that the FCC had issued an order requiring satellite carriers (DirecTV and Dish) to carry digital-only TV stations in markets where the satellite carriers provide “local-into-local” service. That order also required the satellite carriers to carry all high definition (HD) signals in a market in which any station’s HD signal is carried, though that HD carry-all obligation is to be phased into different markets over a four-year period.

The new obligation of satellite operators to carry DTV-only signals applies *both* to stations that are turning off their analog signal *and* to stations that are signing on as digital-only. In either case, stations will have to make an election as to whether they seek (a) must-carry on a satellite carrier’s system or (b) a negotiated retransmission consent agreement. ***In addition to sending election notices, stations that are turning off their analog signals after January 1 but prior to February 17, 2009, must also send an ADDITIONAL notification of the anticipated turn-off date to satellite operators.***

The timing for the elections and notices that the FCC enacted in its April Order is as follows:

- ***Must-carry/retransmission consent election for stations turning off analog on 2/17/2009:*** Election notices must be sent by October 1, 2008. No additional notice required.
- ***Must-carry/retransmission consent election for stations turning off analog prior to 2/17/2009, but after 1/1/2009:*** Election notices must be sent by October 1. ***In addition***, the station must send a notice by October 1, advising of the date on which they anticipate turning off their analog signal.

- *Must-carry/retransmission consent election for stations turning off analog prior to 1/1/2009:* Election notices must be sent any time between (a) 60 days prior to turning off the analog signal and (b) 30 days after signal turn off. No additional notice is required.

Notification/Election Rules Temporarily on Hold: While the FCC enacted these new DTV satellite carriage requirements and notification/election procedures in April, the effective date of the election and notification procedures was put on hold until those procedures were approved by the federal Office of Management and Budget (OMB). Unfortunately, OMB has not yet approved the procedures, and may not get around to doing so until September. While approval in September should not cause a problem for most stations, it could cause a problem for stations that are planning to turn off their analog signal prior to January 1.

In any case, stations should contact FCC counsel to discuss the form, substance and timing of satellite carriage elections and notices. Carriage election notices must have very specific information, as set forth in Section 76.66 of the FCC's rules. Further, all elections and other notices should be sent by certified mail, return receipt requested.

Once the election/notification procedures have been approved by OMB and finally implemented by the FCC, the transition by satellite carriers from analog to digital broadcast signals is supposed to proceed as follows. If a station elects must-carry in a timely manner, then beginning January 1, 2009, satellite carriers must continue carrying the station's analog signal until the actual termination of analog service by the broadcaster. Once the station terminates analog transmission, the satellite carrier must immediately begin carrying the digital signal of the station, *with no a gap in carriage*. However, if the transition for a station occurs after January 1 but prior to February 17, the satellite carrier is required to switch to the station's digital signal immediately *only* if the station notified the satellite carrier by October 1 of the anticipated date of analog turn-off. Stations that turn off their analog signal prior to January 1 are entitled to must-carry of their digital signal no more than 90 days after the date they notify the satellite carrier of their must-carry election. For stations that elect and negotiate a retransmission consent agreement with a satellite operator, these transition dates may be subject to negotiation.

We will let you know when the new DTV election/notification procedures are in effect. In the meantime, because these procedures are a bit complicated, we urge stations to contact us long before the October 1 deadline in order to identify and address any problems that might arise.