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Small Cable Guys Get Break On Digital Carriage

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In November, 2007, the FCC imposed requirements on the way that cable systems transmit digital and analog “must-carry” broadcast TV signals. The goal was to ensure that those signals be viewable to all subscribers. Among other things, the FCC required cable operators to carry the HDTV version of certain broadcast signals, even if cable operators were carrying the analog version of that signal. Recently, the FCC provided some relief to small cable operators regarding this HDTV carriage requirement.

Background

Material Degradation

The FCC first addressed cable carriage of DTV signals in 2001. At that time it established two principles derived from statutory provisions (the 2001 standards) requiring that cable operators carry local TV broadcast signals “without material degradation”:

- “a cable operator may not provide a digital broadcast signal in a lesser format or lower resolution than that afforded to any other signal on the system”; and
- “a cable operator must carry broadcast stations such that, when compared to the broadcast signal, the difference is not really perceptible to the viewer.”

Thus, a digital broadcast signal delivered in HDTV (as opposed to “standard definition” digital or “SD”) had to be carried on the cable system in HDTV. This is an issue for some cable operators, as HDTV takes up more bandwidth on the cable system than SD. Nevertheless, the FCC ruled in 2001 that because the material degradation was to be measured by the eye, it did not necessarily require carriage of *all* of the content bits of a station’s digital signal.

Viewability

In the 2007 Order, the FCC retained the requirement that HDTV signals be carried in HDTV, as well as the comparative approach to determining whether material degradation has occurred. In addition, however, in light of the statutory mandate that all TV signals carried pursuant to “must-carry” must be viewable by subscribers on all TV receivers connected to the cable system, the FCC adopted rules (the 2007 standards) specifying that:

- cable systems that are *not* “all-digital” must provide must-carry signals in analog (as well as in digital), though “all-digital” systems *may* provide them in digital form only;
- the cost of any down-conversion of digital TV signals to analog for this purpose must be borne by cable operators; and
- down-converted signals may count toward the one-third channel capacity/bandwidth capacity cap on commercial TV must-carry obligations.

In explaining the first of these new 2007 standards, the FCC stated that cable operators must either: (a) carry the signals of commercial and non-commercial must-carry stations in analog format to all analog cable subscribers, or (b) for all-digital systems, carry those signals only in digital format, provided that all subscribers with analog television sets have the necessary equipment to view the broadcast content. The FCC also clarified in the 2007 Order that that it is *not* material degradation to down-convert that signal to comply with these “viewability” requirements.

It is important to remember that these requirements apply *only* to *local TV stations carried pursuant to “must-carry.”* Stations carried pursuant to retransmission consent are subject to whatever terms the cable operator and the TV station negotiated in their consent agreement.

Lastly, in the 2007 Order, the FCC recognized that the “viewability” requirements would place significant financial and bandwidth burdens on small cable systems, so it: (a) invited waiver requests from cable operators with less than 552 MHz of activated channel capacity; and (b) issued a notice of proposed rulemaking seeking comments on other ways of relieving the burdens on small cable systems.

As initially adopted, these “viewability” rules will be effective for at least three years from the beginning of the digital transition, *i.e.*, through at least February 17, 2012. The FCC will review them in 2011.

September 2008 Viewability Order

In its most recent Order, the FCC did two things:

First, it exempted for three years “small” cable systems from the requirement that TV signals broadcast in HDTV must be carried in HDTV format. “Small” cable systems are defined for this purpose as systems that either: (a) have 2,500 or fewer subscribers and are not affiliated with a large cable operator serving 10% or more of the nation’s subscribers; or (b) have an activated channel capacity of 552 MHz or less. It did *not* provide an exemption from the three viewability requirements adopted in the 2007 standards.

Second, it clarified that where a must-carry station is broadcasting in SD, and the cable system down-converts that signal to analog for subscribers who cannot view digital signals, the rules do *not* require cable operators to also carry an SD digital version of a broadcast station's signal, in addition to the analog version, to satisfy the material degradation requirement that has been in place since 2001. This is because both an SD digital version and an analog version of the digital broadcast signal received at the headend should have the same resolution – 480i – and thus there should be no perceptible difference between the two versions of the signal. However, if the cable operator also has subscribers who are incapable of viewing an analog signal, then the cable operator *would* have to carry the station’s SD signal.

In spite of the fact that the FCC’s recent Order is intended to “clarify” matters, there may be some uncertainty among cable operators in implementing these requirements. If you have any questions as to how your station’s signal is being carried on cable systems, please call us.