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Movement on Must-Carry and Multicast

Jeffrey J. Gee
703-812-0511
gee@fhhlaw.com

As the February, 2009, transition to all digital television broadcasting approaches, two separate proposals are being reviewed by the FCC that may change the relationship between cable operators and TV stations. In one proposal, cable operators would be required to carry local television in both analog and digital after the February 2009 transition. In a second proposal, independent programmers would obtain “must carry” rights on cable systems by leasing spare “multicast” digital streams from local television stations. Both proposals have drawn widespread interest from broadcasters and widespread condemnation from cable operators.

Under current rules, cable operators are required to carry only the analog signal of local TV broadcasters. TV stations’ digital signals have no must carry rights unless the station is already operating all-digital, and, even then, only a single, primary programming stream will be entitled to mandatory carriage. The two recent proposals would change this situation, opening the door to significantly increased carriage obligations for cable operators and increased carriage opportunities for broadcasters and independent programmers.

The first proposal addresses the question of how digital-only television stations will be made viewable by analog cable subscribers after the transition. The FCC announced this proposal in its April 25th meeting, although actual text of the proposal was not available as of this writing. According to the FCC’s news release and various trade press reports, the proposal would require that cable systems that have not converted to an all digital system carry local TV signals on both the analog and digital tiers to ensure that analog cable subscribers can continue to view their local broadcasters. Alternatively, the cable operator could carry the station solely in digital but provide analog customers the converters necessary to view digital signals.

Boosters of the plan argue that without a dual carriage requirement, those cable subscribers that lack a digital cable box or a DTV cable-ready TV could lose access to local broadcast stations. Cable operators, however, have blasted the plan, arguing that such a requirement would effectively force subscribers to rent digital set top boxes they might not want. Smaller cable systems also expressed the concern that they don’t have the capacity to offer broadcast stations on both analog and digital without losing other programming.

The dual carriage proposal is championed by FCC Chairman Martin, who has earned a reputation as being less than friendly to the cable industry. At least two other FCC Commissioners, however, voiced reservations about the proposal. Democratic Commissioner Adelstein noted that the FCC previously rejected dual carriage proposals and called for a more complete public vetting of other alternatives before focusing on the dual carriage option. Republican Commissioner McDowell also suggested that, at this stage in the process, building a more complete record regarding marketplace solutions would have been preferable to putting forward specific proposals. McDowell also questioned whether the FCC possessed the necessary authority to require dual carriage. Democratic Commissioner Copps's statements on the proposal were generally positive. Republican Commissioner Tate's statement was not available as of this writing.

With respect to the multicast proposal, FCC Chairman Martin has proposed that independent programmers should be allowed to lease "multicast" digital streams from local television stations. In return for complying with many of the same public interest obligations imposed on commercial TV stations, the independent programmers would have the right to require local cable operators to carry their programming stream. Martin is promoting the plan as a way to increase media diversity by giving minorities, women, and small business a way to obtain the exposure of cable carriage without the high costs of full TV ownership. The FCC has not officially released the proposal for public comment yet. Thus, the details of the plan are far from certain. In public statements, however, Martin suggested that programmers would need to meet certain eligibility criteria to qualify. The other FCC Commissioners have voiced tentative but positive reactions to Martin's plan.

While neither the multicast proposal nor the dual carriage proposal is certain to pass, it does seem certain that some change in the current status quo will be needed to avoid the loss of local broadcast service after the digital transition. February, 2009, is closer than you think.