

ALERT

FCC Seeks Comment on Extending Viewability Rule and HD Carriage Exemption

February 14, 2012

On February 10, 2012, the Federal Communications Commission (FCC or Commission) issued a Fourth Further Notice of Proposed Rulemaking and Declaratory Order (FNPRM) seeking comment on whether to extend for another three years two provisions governing how cable operators must carry the signals of television stations electing mandatory carriage (i.e., must-carry). These two provisions—the "viewability" rule and the high definition (HD) carriage exemption for small cable operators—are both scheduled to expire on June 12, 2012 absent Commission action.

The Commission adopted the viewability rule in 2007 so that cable subscribers with analog television sets would still be able to view the digital signals of must-carry television stations following the DTV transition. The viewability rule gives cable operators two options to comply with the rule: (1) carry the signals of must-carry stations in analog format to all analog cable subscribers; or (2) for all-digital systems, carry the signals of must-carry stations only in digital format, provided that all subscribers with analog television sets have the necessary equipment to view the broadcast content. In asking whether to extend the viewability rule or allow it to sunset, the FNPRM notes that several million cable households still rely on analog cable service and that almost 40 percent of all broadcast stations rely on must-carry rather than retransmission consent for carriage. The Commission also seeks comment on the cost of the rule on cable operators and whether there are any viable alternatives.

The HD carriage exemption relates to the Communications Act's requirement that cable operators carry the broadcast signals of must-carry stations without material degradation. In 2007, the FCC interpreted the Act in the context of carriage of digital signals as

Authors

John M. Burgett
Partner
202.719.4239
jburgett@wiley.law
Henry Gola
Partner
202.719.7561
hgola@wiley.law

Practice Areas

Media
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Telecom, Media & Technology

requiring any signal broadcast in HD format to also be carried by cable operators in HD. Operators of small cable systems (i.e., systems with 2,500 or fewer subscribers that are not affiliated with a cable operator serving more than 10 percent of all MVPD subscribers and systems with an activated channel capacity of 552 MHz or less) were granted a temporary exemption from the rule for three years following the DTV transition. In view of the large number of small cable operators that still rely on the exemption, the FNPRM tentatively concludes that a three-year extension of the exemption would be in the public interest. The FNPRM seeks comment on this tentative conclusion and asks whether the benefits to small cable operators of extending the exemption would outweigh the costs to subscribers and broadcasters.

As originally adopted in 2007, both the viewability rule and the HD carriage exemption were scheduled to sunset three years after the conclusion of the DTV transition, which at that time was scheduled to occur on February 17, 2009. Congress subsequently delayed the DTV transition to June 12, 2009. The Declaratory Order simply clarifies that absent Commission action, both the viewability rule and the HD carriage exemption will expire June 12, 2012.

Comments and reply comments are due 25 and 35 days, respectively, after publication of the FNPRM in the *Federal Register*.