

Telecommunications Alert: FCC Allows Cablevision To Encrypt Its Basic Video Service Tier

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Late last week, the FCC's Media Bureau granted Cablevision Systems Corporation's request for a waiver of the FCC's prohibition on encryption of a cable system's basic service tier for its New York City systems (which cover the Bronx and the majority of Brooklyn) after Cablevision completes its transition of those systems to an all-digital delivery format.¹

Cablevision argued that allowing it to encrypt its basic tier would enable it to leave its New York City cable systems "hot." This would allow Cablevision to improve customer service by implementing remote activation and deactivation of accounts, saving its subscribers the aggravation and cost associated with setting up service and installation appointments; to reduce fuel consumption and CO2 emissions; and to alleviate traffic. Cablevision asserted that the waiver would have virtually no negative impact on its cable customers.

High Percentage of Existing Digital Boxes and CableCARDS Among Cablevision's Customers Found "Compelling" Factor

The Media Bureau found that Cablevision provided "cogent reasons for and concrete benefits attributable to its request," especially "[g]iven the unusually high cost of installation calls in the New York City market." The Bureau found it "compelling that more than 99% of Cablevision's subscribers in the New York City franchise area already have digital set-top boxes or CableCARDS." None of Cablevision's New York City subscribers had opposed the waiver, and certain New York City organizations had filed comments in support.

Waiver Conditioned on Cablevision's Free Offers

The Media Bureau conditioned its waiver on Cablevision's offer of free CableCARDS or set-top boxes to its small number of customers lacking such devices, and ordered Cablevision to provide its subscribers notice of such offers. It also directed Cablevision to file 3-month, 6-month, and 12-month follow-up status reports on these efforts.

The Media Bureau declined calls to limit the waiver to three years. It did note, however, that it will "continue to monitor the situation in New York City and reserve[s] the right to revoke the waiver granted herein at any time if the public interest warrants such action." It also stated that

should the FCC address its basic tier encryption rule in a rulemaking, as requested by some parties, Cablevision must come into compliance with any rule subsequently adopted.

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Mintz Levin represented Cablevision in this proceeding. Please contact any of the firm's attorneys listed on this Alert if you wish to receive copies of the FCC Order or any of the filings in the docket.

Endnotes

¹ *Cablevision Systems Corporation's Request for Waiver of Section 76.630(a) of the Commission's Rules*, Memorandum Opinion and Order, MB Docket No. 09-168, DA 10-34 (rel. Jan. 8, 2010).

For assistance in this area, please contact one of the attorneys listed below or any member of your Mintz Levin client service team.

Howard J. Symons

Chair, Communications Practice
(202) 434-7305
HJSymons@mintz.com

Tara M. Corvo

(202) 434-7359
TMCorvo@mintz.com

Frank W. Lloyd

(202) 434-7309
FWLloyd@mintz.com

Stefanie Z. Desai

(202) 585-3550
SZDesai@mintz.com