



**FLEISCHMAN
AND
HARDING LLP**

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MEMORANDUM TO CLIENTS

Re: D.C. Circuit Court Denies Comcast CableCARD Waiver Appeal

The U.S. Court of Appeals for the D.C. Circuit has denied Comcast's request for review of the FCC's 2007 refusal to waive the ban on set-top boxes with integrated security for three of its low-cost, limited-function set-top boxes. Comcast had argued that a waiver was necessary to assist in the development of new digital services and the refusal to grant the waiver would impede Comcast's ability to roll out new digital services. Alternatively, Comcast had argued that the FCC's denial of its waiver request was discriminatory and inconsistent with past FCC policies because other cable operators had received waivers for the same set-top boxes (albeit from the Media Bureau and not the full Commission). The court denied the request, stating that Comcast already offered digital services in all of its markets and was likely to continue to roll out new services even without the waiver. The court also held that in order to properly challenge the policy in court, Comcast would have had to seek full Commission review of the waivers granted to other operators by the Media Bureau.

More specifically, the court stated that because the Media Bureau's action in granting the waivers to other operators was unchallenged, the decisions were not binding precedent on the full Commission. Comcast had argued that it had no incentive to challenge the previous Media Bureau waivers because it supported them; however, the court characterized this argument as "irrelevant." In addition, the court stated that the FCC is not bound to grant waivers for all low-cost set-tops, but must only consider such waiver requests in light of the goal of developing a competitive marketplace. There has been no indication whether Comcast intends to appeal the decision.

We would be pleased to respond to any questions regarding this matter.

FLEISCHMAN AND HARDING LLP