



February 6, 2009

## MEMORANDUM TO CLIENTS

**Re: FCC Soliciting Comment on Declaratory Ruling Petitions Concerning Analog to Digital “Migration” of PEG Channels.**

One of the items released by the FCC over the final weekend of Chairman Martin’s tenure was a letter from Media Bureau Chief Monica Desai to Joe Van Eaton, counsel for the City of Dearborn, Michigan purporting to opine on the legality of “migrating” PEG channels from analog basic to a digital extension of basic. The letter indicated that it had been prompted by a petition for declaratory ruling filed by Dearborn in response to an order issued by the District Court in Dearborn’s litigation against Comcast over Comcast’s PEG channel migration. That order had referred to the FCC a series of specific legal questions raised in that litigation, including questions relating to the impact of a finding of effective competition on a cable operator’s flexibility to “migrate” services from analog basic. (See our Memorandum To Clients, dated October 8, 2008).

Even though the petition for declaratory ruling referenced in Ms. Desai’s letter had not been put out for comment (and notwithstanding the fact that the full Commission had not expressed itself on the issues raised), Ms. Desai’s letter expressed the view that Congress had contemplated the existence of “only one basic service tier, to be provided on a non-discriminatory basis to all subscribers.” Even more troubling, Ms. Desai’s letter goes on to state that “if a provider chooses to convert PEG channels, it must convert the entire basic service tier, whether or not the cable system is subject to effective competition.”

The FCC has now published a Public Notice soliciting comment on Dearborn’s declaratory ruling request. As it turns out, the FCC has received two other related declaratory ruling requests: one from the Alliance for Community Media and one from the City of Lansing. The FCC has consolidated all three petitions and set March 9 as the deadline for comments (and March 24 for replies).

If you would like more information regarding this matter, please let us know.

**FLEISCHMAN AND HARDING LLP**

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