



June 19, 2009

**MEMORANDUM TO CLIENTS**

**Re: FCC Reverses Policy Change For Effective Competition Petitions Using DBS Subscriber Data**

The FCC's Media Bureau has reversed a policy change announced last August regarding the evidentiary standards used by cable operators filing effective competition petitions under the "competing provider" or "50/15" effective competition test. That test requires a cable operator seeking rate deregulation for a particular community to show that the number of households subscribing to competing MVPD services exceeds 15 percent of households in the franchise area. On August 18, 2009, the FCC declared that showings based on DBS subscribership could only be made using zip code plus four data, and that simpler and much less expensive showings based on five digit zip code data would no longer be accepted. On September 2, 2008, the FCC stayed that decision pending further consideration. The Media Bureau has now formally reversed the August change, indicating that five digit zip code data will be accepted going forward, albeit with added scrutiny of odd results such as total MVPD subscribership indicated at over 100 percent in the community.

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

**FLEISCHMAN AND HARDING LLP**

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