



June 3, 2009

MEMORANDUM TO CLIENTS

Re: FCC Grants Waivers for HD-Capable and Other Limited Functionality Set-Top Boxes

The FCC recently released two decisions granting requests for waiver of the set-top box integration ban that represent a departure from previously-established policy. The FCC granted Cable One Inc.'s request for a conditional waiver of the ban with respect to the deployment of one-way, high-definition ("HD")-capable set-top boxes for a cable system serving about 7,000 subscribers. The Commission also granted Evolution Broadband, LLC's request for a three-year waiver with respect to deployment of two set-top box models it manufactures for sale to cable operators. These decisions, respectively, mark the first time the Commission has approved a waiver for integrated boxes with HD capability, as well as the first time it has granted a waiver request for a low-cost, limited-capability integrated device generally rather than for a specific cable operator's deployment of such a device.

The set-top box "integration ban," implemented pursuant to Section 629 of the Communications Act, prohibits cable operators from deploying devices with integrated security functions. The purpose of the ban was to foster "common reliance" by both cable operators and consumer electronics manufacturers on a common separated security solution, which would allow consumers the option of purchasing set-top boxes from sources other than their cable operator. Cable operators (and now set-top box manufacturers), however, are eligible for a waiver of the rules under certain circumstances.

Both the Cable One and Evolution requests were granted pursuant to the Commission's general waiver authority, as clarified by standards set forth in its *2005 Deferral Order* permitting waivers from the integration ban for the deployment of limited-functionality, one-way set-top boxes that give consumers a low-cost option for viewing digital cable programming on analog television sets. While HD capability was previously viewed by the Commission as an advanced functionality not subject to waiver under these criteria, the Commission found that due to marketplace developments since 2005, including the proliferation of HD programming, such technology had become commonplace. The Commission also determined that a waiver for low-cost, HD-capable devices served the public interest because the availability of such devices would promote the commercial sale of HD television sets and ensure that consumers are not deprived of HD-quality programming they expect and pay for when purchasing such sets.

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Both decisions, seen as offering some relief for smaller cable operators from costly set-top box mandates, were met by praise from the industry. Given that the Evolution decision granted a waiver for certain set-top box models generally, any cable operator deploying those set-top box models may, until three years from release of the order, deploy such devices without requesting a separate waiver. It is expected that additional manufacturers will seek general waivers under this newly established precedent. Indeed, the Commission already has adopted expedited procedures pursuant to which it will consider such requests.

While the Commission determined that neither decision was likely to have any significant effect on the national retail market for navigation devices because cable operators would continue to be required to provide separated security for all two-way devices deployed, the Commission nonetheless required Cable One to file an annual report that would allow the FCC to assess whether there was any unanticipated impact with respect to availability of HD-capable devices in the Cable One service area affected by the waiver. In addition, Cable One committed, with respect to the subject system, to: (1) transition to all-digital within one year of the order granting waiver; (2) provide, for a minimum of five years, at least 50 HD networks on the same service tier carrying those same networks in standard definition for no additional charge, and (3) provide, for the same five-year period, one free HD box to subscribers, with additional boxes available for a monthly fee of no more than \$1 per box (assuming a wholesale box cost of \$50 or less).

The Commission also noted in the Cable One order that the set-top box affected by the waiver did not comply with certain technical specifications – i.e., it did not include an IEEE 1394 interface. However, given that grant of the waiver was intended to provide a low-cost, one-way HD box for customers, the Commission found good cause to waive this requirement.

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

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