

January 29, 2010

MEMORANDUM TO CLIENTS

Re: **Cablevision Requests Supreme Court Review of Must-Carry Regime**

Cablevision Systems has petitioned the United States Supreme Court to review the constitutionality of the must-carry rules, which require cable operators to carry broadcast stations considered local to the television market served by a cable system. The must-carry regime has been challenged and narrowly upheld by the Supreme Court in two previous cases, *Turner Broadcasting System vs. FCC I* and *II*, in which the Court initially determined and then affirmed that the lack of robust competition and the existence of a cable bottleneck compelled continued application of the rules.

Cablevision's request is grounded in part on the recent *Comcast vs. FCC* decision, in which the D.C. Circuit Court of Appeals overturned the cable subscribership cap preventing a single cable operator from providing service to more than 30% of U.S. cable television customers. In that decision, the court concluded that "now that cable operators are subject to robust competition, the FCC can no longer identify the 'sufficient' basis" demanded by the Supreme Court in *Turner I* to justify "special obligations" on such providers.

Cablevision seeks review of a 2nd Circuit Court of Appeals judgment upholding an FCC decision that forced the operator to carry broadcast station WRNN on its Long Island cable system pursuant to the market modification provisions of the must-carry rules. Under those provisions, the FCC evaluates several statutory factors, such as historical carriage in and economic ties to a distant community, to determine whether it is appropriate to modify or expand the station's local market to include the community, thus entitling it to must-carry rights there.

Should the Supreme Court agree to take the case, it will be considering, among other things, whether mandatory carriage under the must-carry rules violates the First Amendment and whether, as Cablevision argues, explosive growth in competition among video service providers has rendered must-carry obligations irrelevant in today's marketplace.

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

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