

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Closed Captioning of Video Programming	)	CG Docket No. 05-231
	)	
Closed Captioning Requirements for Digital Television Receivers	)	ET Docket No. 99-254

To: Chief, Consumer and Governmental Affairs Bureau

**DISH NETWORK L.L.C. PETITION FOR CLARIFICATION  
OR, IN THE ALTERNATIVE, WAIVER**

DISH Network L.L.C. (“DISH Network”), by its attorneys, petitions the Consumer and Governmental Affairs Bureau (“Bureau”) of the Federal Communications Commission (“FCC” or “Commission”) for clarification or, in the alternative, waiver of the rules adopted in the above-captioned proceeding with respect to the publication of contact information for closed captioning complaints.<sup>1</sup> Currently, DISH Network provides contact information on its subscriber bills and on its website, offering subscribers the option of raising a closed captioning concern by phone, email, online chat, fax, or mail. Under the new rules adopted by the Commission, all video programming distributors<sup>2</sup> are required to publish contact information for the processing of closed captioning complaints in three places: (1) on a website; (2) in billing statements; and (3) in telephone directories.<sup>3</sup>

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<sup>1</sup> *Closed Captioning of Video Programming; Closed Captioning Requirements for Digital Television Receivers*, 23 FCC Rcd 16674, 16685 (2008) (“*Closed Captioning Order*”).

<sup>2</sup> “Video programming distributors” include over-the-air broadcast television stations and multichannel video programming distributors (“MVPDs”). See 47 C.F.R. § 79.1(a)(2).

<sup>3</sup> *Closed Captioning Order*, 23 FCC Rcd at 16685. See also 47 C.F.R. § 79.1(i)(2).

The Commission has indicated with respect to websites and billing inserts that it is not necessary for a distributor to establish a new means of communication with consumers in order to satisfy the goal of the rule. In other words, if a television station or MVPD currently does not have a website or provide billing statements to its viewers, there is no requirement to launch a website or begin sending out billing statements in order to provide contact information for closed captioning complaints. However, there is a lack of clarity regarding whether a video programming distributor must place advertisements or listings in telephone directories in order to provide closed captioning information, even if the distributor currently does not utilize telephone directories as a direct means of communicating with viewers.<sup>4</sup>

DISH Network believes that the Commission did not intend to require the creation of new relationships with telephone directory publishers in every community across the country solely for the purpose of listing contact information for closed captioning complaints. Accordingly, DISH Network requests that the Bureau clarify that a video programming distributor is not required to place advertisements or listings in telephone directories in order to provide closed captioning information if the distributor currently does not utilize telephone directories as a direct means of communicating with viewers. In the event the Bureau disagrees with DISH Network's interpretation of the Commission's intentions and does not clarify the rule in the manner requested, DISH Network requests that the Bureau grant a permanent waiver of the telephone directory rule, to the extent the Bureau deems necessary. A waiver is justified because

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<sup>4</sup> DISH Network is filing concurrently with this Petition comments to the Office of Management and Budget ("OMB") on the burden associated with the telephone directory information collection. *Notice of Public Information Collection Requirement Submitted to OMB for Review and Approval*, OMB Control No. 3060-0761, Comments of DISH Network LLC (filed Apr. 23, 2009).

application of the rule to nationwide MVPDs would not serve the purpose of the rule and the requirement would be unduly burdensome to DISH Network.

## **I. REQUIREMENT TO PUBLISH CLOSED CAPTIONING CONTACT INFORMATION**

The *Closed Captioning Order* modified the closed captioning complaint process in a number of ways,<sup>5</sup> including the addition of rule Section 79.1(i) to require that video programming distributors:

- Provide contact information for purposes of receiving and responding to any closed captioning concerns of an immediate nature (*e.g.*, the captioning is garbled or suddenly disappears);
- Provide contact information and identify a person designated to handle written closed captioning complaints that do not involve issues that can be resolved immediately; and
- Provide both types of contact information on their websites, in telephone directories, and on billing statements, and submit such contact information to the FCC for posting on the FCC website.<sup>6</sup>

The Commission stated in the *Closed Captioning Order* that information need only be published on a website or in billing inserts if a video programming distributor already uses such means to communicate with consumers.<sup>7</sup> However, the Commission did not similarly qualify the telephone directory requirement.

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<sup>5</sup> For example, the FCC modified its rules to give viewers or their representatives the option of submitting closed captioning complaints either to the FCC or directly to the defendant television station or MVPD, and shortened from forty-five (45) to thirty (30) days the period of time in which a defendant television station or MVPD must respond to a written closed captioning complaint.

<sup>6</sup> *Closed Captioning Order*, 23 FCC Rcd at 16685; 47 C.F.R. § 79.1(i). Although the Commission's order is final, the rule is not effective due to the pending OMB approval process.

<sup>7</sup> *Id.*, n. 85.

**II. APPLICATION OF THE TELEPHONE DIRECTORY REQUIREMENT TO MVPDS WITH NATIONWIDE SERVICE WOULD BE UNDULY BURDENSOME, IMPRACTICAL, AND INCONSISTENT WITH THE FLEXIBLE APPROACH ADOPTED BY THE COMMISSION FOR WEBSITES AND BILLING STATEMENTS**

**A. The Telephone Directory Requirement Creates a Significant and Unjustified Burden on Video Programming Distributors Who Do Not Have Existing Relationships with Telephone Directory Publishers**

The portion of Section 79.1(i)(2) that applies to telephone directory publication creates a significant and unjustified burden for nationwide MVPDs, like Direct Broadcast Satellite (“DBS”) providers. This is particularly true when the telephone directory requirement is compared with the website and billing statement requirements, for both of which the Commission explicitly stated that a distributor was not required to create a new means of communicating with viewers simply to provide closed captioning information. In adopting the requirement to publish closed captioning contact information in telephone directories, it appears that the Commission mistakenly believed either (a) that all video programming distributors already directly publish contact information in local telephone directories, or (b) that the requirement to create a relationship with local telephone directory publishers in order to include closed captioning contact information would not be an undue burden. Neither of these assumptions is correct.

First, DISH Network, as a nationwide provider of video programming services, does not directly advertise or otherwise place commercial listings in local telephone directories.<sup>8</sup> As a

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<sup>8</sup> Third-party retail partners that sell DISH Network service may independently place advertisements in local directories promoting their business, which may include DISH Network satellite service. DISH Network does not directly use local directories as a means to communicate with existing subscribers about closed captioning or any other DISH Network service related issues.

national provider, DISH Network maintains a national toll-free telephone number and a national comprehensive website for customer support. Accordingly, DISH Network does not have direct relationships with publishers of local telephone directories. Thus, in order to comply with the requirement to include in telephone directories contact information for the processing of closed captioning complaints, DISH Network would need to create new relationships with publishers of local telephone directories.

Moreover, due to DISH Network's satellite technology and nationwide footprint, the company would need to create new relationships with the local telephone directory provider in virtually every community in the U.S., big and small, in order to ensure that the relevant information was published in a telephone directory in every area served by DISH Network. DISH Network currently does not have any mechanism in place that would allow the company to easily identify and contact directory publishers in all of these communities. To do so, DISH Network would need to hire new personnel and/or divert existing resources for this purpose. Thus, this requirement would impose financial and personnel burdens well beyond any reasonable burden that would be justified by the Commission's goal of publicizing closed captioning complaint contact information.

**B. The Telephone Directory Requirement is Impractical, Particularly in Light of the Commission's Related Determination That No New Means of Consumer Communication Are Necessary to Comply With the Rule**

The telephone directory requirement not only is burdensome, but also is not an effective communications tool as applied to DISH Network. Because DISH Network currently does not directly advertise in local telephone directories, this is not a source that DISH Network subscribers look to for purposes of contacting their MVPD. Rather, they turn to the toll-free

telephone number and/or website, where the type of information required by the Commission is provided in an easily accessible manner. As a result of our direct billing relationship with our subscribers, our customers have no need to look to local telephone directories for information about our service offerings. In stark contrast to information provided on their subscriber bill and on the main DISH Network website, it is not realistic to expect that DISH Network subscribers will meaningfully utilize the closed captioning information required by the Commission if it were also published in local telephone directories by DISH Network. Thus, it is impractical to require that a nationwide MVPD, such as DISH Network, list closed captioning contact information in telephone directories.

In addition, the FCC has stated that video programming distributors need not create new publicity vehicles or means of communicating with consumers in order to make available the closed captioning contact information. For example, in the *Closed Captioning Order*, the Commission explicitly stated that if a distributor “does not have a website, it is not required to establish one in order to satisfy this contact information requirement.”<sup>9</sup> Similarly, the Commission indicated that a distributor is required to publish contact information on billing statements only “to the extent billing statements are issued.”<sup>10</sup> Thus, with respect to two of the three required methods for listing closed captioning contact information, the Commission recognized that some providers may not already use these vehicles and should not be required to establish them. The FCC did not address or explain this asymmetry between the various approaches in the *Closed Captioning Order*. It appears, however, that the Commission believes that its goal of allowing consumers to easily and promptly contact video programming distributors in the event of closed captioning complaints is not undermined if a distributor is not

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<sup>9</sup> *Closed Captioning Order*, 23 FCC Rcd at 16685, n. 85.

<sup>10</sup> *Id.* at 16685.

able to publish contact information in all three of these places. Accordingly, the Commission cannot justify the practical utility of requiring telephone directory publication where no previous relationship exists with directory publishers and subscribers currently do not rely on telephone directories for purposes of contacting the provider.

**III. IN THE EVENT THE BUREAU DECLINES TO CLARIFY THE RULE AND DETERMINES THAT A WAIVER IS NECESSARY, DISH NETWORK QUALIFIES FOR A WAIVER**

The Commission may waive its rules for good cause.<sup>11</sup> Thus, if the Bureau declines to clarify the telephone directory rule, DISH Network requests a waiver of the rule to the extent the Bureau deems necessary.

**A. The Purpose of Requiring Contact Information to be Published in Telephone Directories Would Not be Served by Requiring Operators Who Do Not Currently Use Telephone Directories to Use Them for This Purpose**

As described above, the telephone directory requirement is not useful as applied to DISH Network, and the purpose of the rule thus would not be served by its application in this case. The rule is intended to allow customers to “more easily and promptly contact the appropriate video programming distributor” to seek redress with respect to closed captioning complaints.<sup>12</sup> Yet, because DISH Network currently does not directly advertise in local telephone directories,

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<sup>11</sup> See 47 C.F.R. § 1.3. See also *WAIT Radio v. FCC*, 135 U.S. App. D.C. 317, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027, 93 S. Ct. 461, 34 L. Ed. 2d 321 (1972) (“*WAIT Radio*”). Where, as here, the particular facts make strict compliance with a rule inconsistent with the public interest, the Commission may exercise its discretion to waive the rule. See *Northeast Cellular Telephone Co. v. FCC*, 283 U.S. App. D.C. 142, 897 F.2d 1164, 1166 (“*Northeast Cellular*”). Consideration of a waiver request may take into account considerations of hardship, equity, and/or effective policy implementation. See, e.g., *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

<sup>12</sup> *Closed Captioning Order*, 23 FCC Rcd at 16685 (“We find these new requirements necessary to ensure that consumers can more easily and promptly contact the appropriate video programming distributor to report closed captioning problems or to file complaints.”).

this is not a source that DISH Network subscribers look to for purposes of contacting their MVPD. Accordingly, strict compliance with the rule would not be in the public interest. Meanwhile, grant of the waiver would be in the public interest because it will avoid significant (and unnecessary) expenditures of economic and personnel resources on the part of DISH Network – concerns that the Commission already has recognized explicitly with respect to both websites and billing statements.

**B. The Unique Nationwide Footprint of DBS Results in a National-Level Relationship Between DISH Network and Its Customers, Rendering the Telephone Directory Requirement Unduly Burdensome and Inequitable**

DBS providers with nationwide footprints are uniquely situated when it comes to communication with their subscribers in local communities. For example, as described above, DISH Network does not directly advertise or otherwise place commercial listings in local telephone directories. Because DISH Network does not have relationships with publishers of local telephone directories, DISH Network would need to create new advertising relationships with publishers of local telephone directories in virtually every community in the U.S. in order to ensure publication of the relevant information in telephone directories nationwide. This would impose financial and personnel burdens well beyond any reasonable burden that can be justified by the Commission’s goal of publicizing closed captioning complaint contact information. In addition, such a result would be inequitable, as the rules provide flexibility for video programming distributors without websites or billing statements, the other two required places for publication of the relevant contact information.

#### **IV. CONCLUSION**

DISH Network requests that the Bureau clarify that a video programming distributor is not required to place advertisements or listings in telephone directories in order to provide closed captioning information if the distributor currently does not utilize telephone directories as a direct means of communicating with viewers. Alternatively, in the event the Bureau deems a waiver necessary, DISH Network requests a permanent waiver of the telephone directory rule.

Respectfully submitted,

**DISH NETWORK L.L.C.**

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