



December 7, 2011

BY ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: *MB Docket Nos. 11-93 and 11-154*

Dear Ms. Dortch:

This is to inform you that, on December 6, 2011, Stacy Fuller of DIRECTV, Inc., Alison Minea of DISH Network L.L.C., Cristina Pauzé of Time Warner Cable, and undersigned counsel met with Sherrese Smith, Senior Counsel and Legal Advisor for Chairman Genachowski, and Jessica Almond, Legal Advisor in the Media Bureau, to discuss implementation of the CALM Act and requirements for closed captioning of programming delivered via Internet protocol (“IP”).

With respect to the CALM Act, they discussed the resources that a distributor would have to reallocate if it were required to monitor commercial loudness on each of the channels it transmits for a continuous 24-hour period each year. Because there is no equipment currently available that can automatically determine whether a spike in loudness reflects an improperly calibrated commercial rather than a particularly loud portion of the long-form content (*e.g.*, a series of explosions), the burden imposed by such detailed monitoring for each several hundred channels transmitted would be significant. They explored ways in which this burden could be mitigated, including a reduction in the number of channels to be monitored each year (*e.g.*, from 100% each year to 50%) and a reduction in the duration of such monitoring (*e.g.*, from 24 hours to 6 hours). In addition, they discussed the concern that the Commission could hold distributors liable for unresolved loudness issues caused by a programmer, even if that distributor took all reasonable steps to identify the source of a problem and worked with the programmer to correct it. In such a case, it would be punitive to impose liability on a distributor that has done everything the Commission has required and could reasonably expect to address an issue that is ultimately outside of its control. At a minimum, a distributor’s efforts should substantially mitigate liability in any enforcement action related to loudness issues.

With respect to IP closed captioning, they discussed the statute’s clear allocation of responsibility, and in particular the fact that distributors “shall be deemed to be in compliance” if they enable the rendering or pass through of closed captions. Because programmers have

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primary control over captioning and are directly subject to Commission jurisdiction for this purpose, they should also have primary responsibility for ensuring compliance with the Commission's captioning requirements. Although the Commission adopted an indirect approach that made distributors responsible for ensuring compliance by programmers with captioning of conventional television programming, that model should not be extended to the IP context. There is no question that the Commission has authority to impose liability directly upon programmers for the captions they insert, so there is no reason to force distributors to act as a middleman with respect to a process they do not control. In addition, IP distribution models are much more varied and involve additional parties (including equipment manufacturers), which would significantly increase the burden if distributors alone were responsible for identifying the source of and addressing a captioning issue. In these circumstances, the statute's allocation of responsibility is not only clear, but clearly appropriate.

Respectfully submitted,

/s/

William M. Wiltshire

Counsel for DIRECTV

cc: Sherrese Smith
Jessica Almond