

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Closed Captioning of Video Programming)	CGB Docket No. 05-231
)	

ORDER

Adopted: February 16, 2010

Released: February 16, 2010

By the Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. In this Order, the Consumer and Governmental Affairs Bureau (Bureau) waives in part the requirement in amended section 79.1 of the Commission's rules that video programming distributors place certain contact information in telephone directories.¹ Specifically, we waive amended section 79.1 to the extent that it requires video programming distributors to place contact information for the pursuit of immediate closed captioning concerns and the filing of closed captioning complaints in local telephone directories in which the distributor does not itself directly advertise or otherwise place commercial listings, *so long as* the distributor makes the contact information available on its website or on billing statements. We take this action in response to a Petition for Clarification or, in the Alternative, Waiver, filed on April 23, 2009, by DISH Network L.L.C. (DISH Network)²

II. BACKGROUND

2. In the *November 2008 Closed Captioning Order*, the Commission required that video programming distributors make available two types of contact information – information for the receipt and handling of immediate closed captioning concerns by consumers, and information for written closed captioning complaints. The Commission directed distributors to include this information on their websites, in telephone directories, and in billing statements.³ As to websites, the Commission expressly stated that if a distributor did not already have a website, it was not required to establish one for this purpose.⁴ And as to billing statements, the Commission recognized that broadcasters do not issue billing

¹ 47 C.F.R. § 79.1. See *Closed Captioning of Video Programming, Closed Captioning Requirements for Digital Television Receivers*, CG Docket No. 05-231, ET Docket No. 99-254, Declaratory Ruling, Order, and Notice of Proposed Rulemaking, 23 FCC Rcd 16674 (Nov. 7, 2008) (*November 2008 Closed Captioning Order*). See also *Closed Captioning of Video Programming, Closed Captioning Requirements for Digital Television Receivers*, CG Docket No. 05-231, ET Docket No. 99-254, Erratum, DA 09-1373 (June 19, 2009). The provisions regarding telephone directories, which the Commission adopted as a means for consumers to more easily reach distributor personnel with concerns and complaints about closed captioning, will not become effective until the Commission publishes a notice in the Federal Register announcing that the rules containing them have been approved by the Office of Management and Budget (OMB). The provisions regarding telephone directories will be located in 47 C.F.R. § 79.1(i)(1) and (i)(2).

² DISH Network L.L.C. Petition for Clarification, or, in the Alternative, Waiver (filed Apr. 23, 2009) (*DISH Network Petition*). We note that the *DISH Network Petition* was filed several months after the deadline for filing petitions for reconsideration of the *November 2008 Closed Captioning Order*.

³ *November 2008 Closed Captioning Order*, 23 FCC Rcd at 16686, para. 33.

⁴ *Id.*

statements and therefore limited the requirement to apply only to the extent that billing statements are issued.⁵

3. In its petition, DISH Network asks the Bureau to 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 does not otherwise use telephone directories as a direct means of communication with viewers.⁶ In the alternative, DISH Network asks that the Bureau grant a permanent waiver of the telephone directory rule “to the extent the Bureau deems necessary.”⁷

III. DISCUSSION

4. DISH Network, a national provider of direct broadcast satellite service, states that it does not currently directly advertise or otherwise place commercial listings in local telephone directories, and does not have direct relationships with publishers of local telephone directories. DISH Network instead maintains a national toll-free telephone number and a comprehensive website for customer support.⁸

5. DISH Network asserts that there is a lack of clarity about whether amended section 79.1 requires video programming distributors to provide closed captioning information in telephone directories if they do not already utilize directories as a direct means of communicating with viewers.⁹ DISH Network argues that if it must do so, the company would have to create new relationships with publishers of local telephone directories in virtually every community in the United States, and that such a requirement would be unduly burdensome.¹⁰ DISH Network notes that the Commission imposed the website and billing statement requirements only on entities that currently have websites or use billing statements.¹¹ On that basis, DISH Network states that it 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, and asks the Bureau to clarify the rule as applying only when a distributor is already using telephone directories.¹²

6. As DISH Network itself points out, “the Commission did not similarly qualify the telephone directory requirement,” as it did the website and billing statement requirements.¹³ Because the “clarification” that DISH Networks seeks does not appear to be supported by the language of the Commission’s order, we do not believe that it would be appropriate for the Bureau to clarify the Commission’s order in the manner requested by DISH Network. We do, however, find good cause to grant a limited waiver of the telephone directories provisions of amended section 79.1.¹⁴ While section 79.1(i) is designed to ensure that consumers are readily able to locate contact information for the pursuit of immediate closed captioning concerns or the filing of closed captioning complaints, on balance we also

⁵ *Id.*

⁶ *DISH Network Petition at 2.*

⁷ *Id.*

⁸ *Id.* at 4-5.

⁹ *Id.* at 2.

¹⁰ *Id.* at 5.

¹¹ *Id.* at 3.

¹² *Id.* at 2.

¹³ *Id.* at 3.

¹⁴ The Commission may waive its regulations for good cause shown. 47 C.F.R. § 1.3. In general, the waiver request must demonstrate special circumstances warranting a deviation from the general rule and that such a deviation will serve the public interest. *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

are persuaded that compliance with the telephone directories provisions could be unduly burdensome where a company does not already use telephone directories, particularly for a nationwide company such as DISH Network.¹⁵ We therefore waive amended section 79.1 to the extent that it requires video programming distributors to place contact information for the pursuit of immediate closed captioning concerns and the filing of closed captioning complaints in local telephone directories in which the distributor does not itself directly advertise or otherwise place commercial listings, *so long as* the distributor makes the contact information available on its website or in billing statements.¹⁶ For purposes of this waiver, we define commercial listing to include any paid advertisement or other paid listing. This might include, for example, a paid expanded listing that contains more than merely name, location, and telephone number, or a listing in a larger, bolded, or highlighted font as compared to the standard listing, or the listing of a toll free (rather than local) number. In instances where a distributor has already contracted for a paid advertisement or other paid listing, DISH Network's concern that it would have to establish new relationships with directory publishers is inapplicable, and there is therefore no reason to waive the telephone directory requirement.

III. ORDERING CLAUSE

7. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 713 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 613, section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, and the authority delegated pursuant to sections 0.141 and 0.361 of the Commission's rules (47 C.F.R. §§ 0.141 and 0.361), 47 C.F.R. § 79.1(i)(1) and (i)(2) IS WAIVED to the extent described herein.¹⁷

FEDERAL COMMUNICATIONS COMMISSION

Joel Gurin
Chief
Consumer and Governmental Affairs Bureau

¹⁵ See, e.g., *DISH Network Petition* at 5 (noting that because of DISH Network's nationwide footprint, amended section 79.1 would require it to "create new relationships with the local telephone directory provider in virtually every community in the U.S., big and small," and that such a requirement would impose unreasonable financial and personnel burdens).

¹⁶ In accordance with paragraph 33 of the *November 2008 Closed Captioning Order*, distributors must make the contact information available *both* on their websites and in billing statements, if they have a website and issue billing statements. See *November 2008 Closed Captioning Order*, 23 FCC Rcd at 16686. We note that consumers will also have access to closed captioning contact information on the Commission's website. *Id.* at 16686-87, para. 34; see also *Closed Captioning of Video Programming*, CG Docket No. 05-231, Order, 24 FCC Rcd 14837 (Dec. 11, 2009).

¹⁷ This waiver is effective immediately upon publication of notice in the Federal Register that OMB has approved section 79.1(i)(1). See *supra* note 1.