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## FCC Announces Effective Date of Revised Closed Captioning Complaint Procedures

by Lauren Lynch Flick and Scott R. Flick

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### *Video Programming Distributors Must Notify FCC by March 22, 2010 of Certain Contact Information and Begin Compliance with Telephone Directory Listing Requirements.*

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Earlier this week, we advised you of a recent Commission action which could affect video programming distributors' obligations under closed captioning complaint rules that the Commission adopted in November 2008 but which had not yet become effective. As we predicted, those Commission actions were a prelude to the rules becoming effective, which occurred with their publication today in the Federal Register. Accordingly, effective today, February 19, 2010, new timeframes governing when a video programming distributor must respond to a complaint regarding closed captioning are in effect. In addition, video programming distributors must now comply with the provisions requiring them to provide contact information for addressing closed captioning complaints to the FCC and the public.

Under the FCC's rules, the term "video programming distributor" includes television stations, multichannel video program providers, and other distributors of video programming to the public, such as DBS, ITFS or BRS/EBS providers.

### **Background**

In November 2008, the FCC issued a Declaratory Ruling, Order and Notice of Proposed Ruling ("Declaratory Ruling") in which it, among other things, adopted new procedures for the handling of closed captioning complaints. The new procedures provide for shorter timeframes within which a video programming distributor must respond to a complaint regarding closed captioning. It also broadens the avenues by which complainants can seek redress by allowing the complainant to file either with the FCC or with the video programming distributor. The timeframes established are as follows:

- Complaints regarding closed captioning must be made in writing within 60 days of the airing of the programming at issue;
- Complaints may be made to the video programming distributor or to the FCC;

- Form 2000-C may be used by the public in making complaints to the FCC;
- The video programming distributor must respond to a complaint within 30 days of receiving it, whether it is received directly from the complainant or forwarded by the FCC;
- If the complainant contacts the video programming distributor initially, and is not satisfied with the response, it may re-file its complaint directly with the FCC, which will forward it to the distributor and require a response within 30 days.

The rules as originally adopted also provided that, in the case of a complaint involving programming for which the video programming distributor is not responsible for captioning (such as a satellite operator with regard to programming from local television stations), the video programming distributor must forward the complaint to the appropriate party within seven (7) days and advise the FCC and the complainant that it has done so. As we previously advised, the FCC suspended this portion of the rule in December 2009 because compliance with it might cause video programming distributors to violate other Commission provisions that prohibit the release of subscriber information to third parties.

In addition, to facilitate the filing (and originally, the forwarding) of captioning complaints, the new rules require that video programming distributors provide the following information to the public:

- A telephone number, fax number, and e-mail address where a consumer can receive informed assistance with an immediate closed captioning complaint, such as captions appearing to be garbled; and
- The name, title, telephone number, fax number, e-mail and postal addresses where a consumer can address a written closed captioning complaint that does not raise the immediate concerns identified above.

This information must be provided on the video programming distributor's website, if it has one; in billing statements, if it issues them; and in local telephone directories. The information must also be filed with the FCC. Video programming providers must now comply with this requirement. Information on websites and provided to the FCC must be kept current and revised within 10 business days of any change. Information must be published in telephone directories beginning with the next publication of the telephone directory.

### **Limited Waiver of Telephone Directory Publication Requirement**

Earlier this week, in response to a request by DISH Network, L.L.C., the FCC granted a "limited waiver" of the requirement that video programming distributors publish closed captioning complaint contact information in local telephone directories. Specifically, the FCC will not require a video programming distributor to publish the closed captioning complaint contact information where: they do not currently advertise or otherwise pay for commercial listings in a particular directory, and the video programming distributor provides the closed captioning contact information either on its website or in billing statements. A more detailed discussion of the waiver requirements can be found in our February 17, 2010 Advisory on the issue.

### **Notification of FCC of Closed Captioning Complaint Contact Information**

The Declaratory Order also requires that video programming distributors provide their closed captioning complaint contact information to the FCC within 30 days of Federal Register publication, which has now occurred. Accordingly, video programming distributors must provide the contact information identified

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above to the FCC by March 22, 2010. The information can be provided by e-mail to CLOSEDCAPTIONING\_POC@fcc.gov, via postal mail to the Chief of the Disability Rights Office, Consumer and Governmental Affairs Bureau, or via a new webform announced by the FCC in December 2009, which can be found at <https://esupport.fcc.gov/vpd-data/login!input.action>.

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Should you have any questions regarding this alert or closed captioning in general, please contact us.

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