



December 15, 2009

MEMORANDUM TO CLIENTS

Re: Recent FCC Closed Captioning Developments

The FCC recently released two items concerning closed captioning complaint procedures adopted in its *November 2008 Order* (see our “Memorandum to Clients” dated November 21, 2008). The first item suspends the effective date of the requirement for video programming distributors (“VPDs”) to forward certain closed captioning complaints to third parties while the second item establishes a webform for VPDs to submit contact information for handling closed captioning complaints to the FCC.

In its *November 2008 Order*, the FCC adopted an amendment to section 79.1(g)(3) of its rules that would require VPDs receiving a complaint regarding programming by a television broadcast station or other programming for which VPDs are exempt from closed captioning to forward the complaint within seven days to the entity responsible for closed captioning of the programming and to notify the consumer and the FCC that they did so. One reason cited by the FCC in adopting the amended rule was that VPDs receiving a complaint in error would likely be in a better position than the consumer to know to whom the complaint should be directed for resolution.

However, this requirement appears to conflict with certain provisions of the Communications Act (“Act”) that prohibit disclosure by cable operators and satellite carriers of personally identifiable information to third parties. Specifically, under Sections 631 and 338 of the Act, cable operators and satellite carriers, respectively, cannot reveal personally identifiable information concerning any subscriber without his/her prior written or electronic consent. Thus, to avoid subjecting VPDs to conflicting legal obligations, the Commission is temporarily suspending the effective date of the rule and will issue a notice of proposed rulemaking in the near future to seek comment on how to revise it.

In the *November 2008 Order*, the Commission also adopted new rules that will require VPDs to make certain contact information available to consumers to make it easier for them to report immediate closed captioning concerns and file written complaints. In addition to providing this information on their websites, in telephone directories and in billing statements (as applicable), VPDs will also be required to file (and periodically update) this contact information with the Commission for placement on the FCC’s website.

The Commission has now amended its rules to facilitate submission of this information through a webform. While VPDs may also provide this information via email or in a paper filing, the FCC strongly encourages use of the webform because it will: (i) ensure that the information submitted is complete and properly formatted, (ii) provide a secure method to enter data or make changes to previously entered data, (iii) reduce the potential for human error that could occur if Commission staff is required to manually enter the data, and (iv) be available for public searches almost immediately. The webform should be accessible on the Commission's website in the near future.

These changes do not impact other rules adopted in the *November 2008 Order*, which have been approved by the Office of Management and Budget. The new rules, as amended to permit submission of closed captioning contact information through a webform, will become effective when the Commission publishes a notice in the *Federal Register* announcing their effective date.

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