



February 18, 2010

## MEMORANDUM TO CLIENTS

### **Re: FCC Waives Certain Aspects of Amended Closed Captioning Rules**

In response to a petition filed by DISH Network L.L.C. (“DISH”), the FCC is waiving certain aspects of its closed captioning rules relating to placement of closed captioning contact information in telephone directories. In a *November 2008 Order*, the FCC amended its rules to, among other things, require video programming distributors (“VPDs”) to provide contact information on their websites, in billing statements and in local telephone directories to guide consumers in raising immediate closed captioning concerns and in filing written closed captioning complaints (see our “Memorandum to Clients” dated November 21, 2008). As a result of the waiver, VPDs are not required to provide such information in local telephone directories in which they do not directly advertise or otherwise place commercial listings, so long as they meet the website and bill publication requirements.

DISH pointed out in its petition that it does not currently advertise or maintain relationships with publishers of local telephone directories, but rather has established a national toll-tree number and a website for handling customer support issues. Given DISH’s nationwide footprint, compliance with this obligation would require DISH to create new relationships with publishers of local telephone directories in virtually every community in the United States.

The Commission agreed that requiring compliance with this provision for VPDs that do not already utilize telephone directories for purposes of marketing their services to consumers would be unduly burdensome. Thus, VPDs must only include closed captioning contact information in telephone directories in which they place commercial listings. A commercial listing might include: a paid advertisement or other paid listing that contains more than merely name, location, and telephone number; a listing in larger, bolded, or highlighted font as compared to a standard listing; or a listing of a toll-free (rather than a local) number.

This change will go into effect when the FCC publishes a notice in the *Federal Register* announcing that the provision relating to telephone directories and other changes adopted in the *November 2008 Order* have been approved by the Office of Management and Budget. With resolution of this and other issues that the FCC addressed in December 2009 – e.g., potential conflicts of the amended closed captioning rules with subscriber privacy protections mandated by the Cable Act (see our “Memorandum to Clients” dated December 15, 2009) – it is anticipated that such publication will occur shortly.

**FLEISCHMAN AND HARDING LLP**

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