

**Before the
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C.**

Notice of Public Information Collection)	
Requirement Submitted to OMB for Review)	OMB Control No. 3060-0761
And Approval)	

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COMMENTS OF DISH NETWORK L.L.C.

DISH Network L.L.C. (“DISH Network”), by its attorneys, responds out of an abundance of caution to the above-captioned notice (“*Notice*”) of Public Information Collection Requirement submitted by the Federal Communications Commission (“FCC” or “Commission”) to the Office of Management and Budget (“OMB”) with respect to the publication of contact information for closed captioning complaints in telephone directories.¹ DISH Network is filing concurrently with these comments a Petition for Clarification or, in the Alternative, Waiver, seeking a clarification from the Commission’s Consumer and Governmental Affairs Bureau that a video programming distributor need not place advertisements or listings in telephone directories in order to provide closed captioning contact information if the distributor currently does not utilize telephone directories as a means of communicating with viewers.²

Currently, DISH Network provides contact information on its subscriber bills and on its website, offering subscribers the option of raising a closed captioning concern by phone, email,

¹ See *Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested*, 74 FR 12360 (2009) (“*Notice*”).

² *Closed Captioning of Video Programming; Closed Captioning Requirements for Digital Television Receivers*, CG Docket No. 05-231, ET Docket No. 99-254, DISH Network L.L.C. Petition for Clarification or, in the Alternative, Waiver (filed Apr. 23, 2009).

online chat, fax, or mail. Under new rules adopted by the Commission, all video programming distributors³ would be required to publish contact information for the processing of closed captioning complaints in three places: (1) on a website; (2) in billing statements; and (3) in telephone directories.⁴ In this OMB proceeding, the Commission seeks approval under the Paperwork Reduction Act (“PRA”) to impose these requirements.⁵

As discussed further below, the Commission has indicated with respect to websites and billing inserts that it is not necessary for a distributor to establish a new means of communication with consumers in order to satisfy the goal of the rule. In other words, if a television station or MVPD currently does not have a website or provide billing statements to its viewers, there is no requirement to launch a website or begin sending out billing statements in order to provide contact information for closed captioning complaints. However, there is a lack of clarity regarding whether a video programming distributor must place advertisements or listings in telephone directories in order to provide closed captioning contact information, even if the distributor currently does not utilize telephone directories as a direct means of communicating with viewers.

While DISH Network 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, these comments demonstrate that such a requirement, if intended, would violate the PRA. Specifically, this substantial burden clearly violates the PRA because (1) it has not been

³ “Video programming distributors” include over-the-air broadcast television stations and multichannel video programming distributors (“MVPDs”). See 47 C.F.R. § 79.1(a)(2).

⁴ *Closed Captioning of Video Programming; Closed Captioning Requirements for Digital Television Receivers*, 23 FCC Rcd 16674, 16685 (2008) (“*Closed Captioning Order*”).

⁵ *Notice*, 74 FR at 12360. See also 47 C.F.R. § 79.1(i)(2).

“reduce[d] to the extent practicable and appropriate;”⁶ (2) it is not “consistent and compatible, to the maximum extent practicable, with the existing ... practices” of nationwide MVPDs;⁷ and (3) it lacks “practical utility” under the PRA.⁸

For these reasons, discussed further below, OMB should disapprove this information collection. At a minimum, OMB should return the information collection to the Commission with instructions to make the material changes necessary to address these PRA violations. In the event of such action, the Commission should be required to modify the telephone directory rule to parallel the qualified nature of the website and billing statement rules.

I. PROPOSED INFORMATION COLLECTION

As the *Notice* indicates, the FCC recently modified the closed captioning complaint process in a number of ways,⁹ including “requiring video programming distributors to make contact information available in phone directories, on the Commission’s Web site and their own Web sites (if they have them), and in billing statements (to the extent they issue them).”¹⁰ Specifically, in the *Closed Captioning Order*, the FCC added rule Section 79.1(i) to require that video programming distributors:

- Provide contact information for purposes of receiving and responding to any closed captioning concerns of an immediate nature (*e.g.*, the captioning is garbled or suddenly disappears);

⁶ *Paperwork Reduction Act*, 44 U.S.C. § 3506(c)(3)(C).

⁷ 44 U.S.C. § 3506(c)(3)(E).

⁸ 44 U.S.C. § 3506(c)(3)(A).

⁹ For example, the FCC modified its rules to give viewers or their representatives the option of submitting closed captioning complaints either to the FCC or directly to the defendant television station or MVPD, and shortened from forty-five (45) to thirty (30) days the period of time in which a defendant television station or MVPD must respond to a written closed captioning complaint.

¹⁰ *Notice*, 74 FR at 12360.

- Provide contact information and identify a person designated to handle written closed captioning complaints that do not involve issues that can be resolved immediately; and
- Provide both types of contact information on their websites, in telephone directories, and on billing statements, and submit such contact information to the FCC for posting on the FCC website.¹¹

The Commission stated in the *Closed Captioning Order* (and explained in the *Notice*) that information need only be published on a website or in billing inserts if a video programming distributor already uses such means to communicate with consumers.¹² However, the Commission did not similarly qualify the telephone directory requirement.

II. THE PROPOSED INFORMATION COLLECTION VIOLATES THE PRA

The Commission’s new information collection has not “reduce[d] to the extent practicable and appropriate the burden” and is not “necessary for the proper performance of the functions of the agency, including that the information has practical utility.”¹³ Nor is this information collection “consistent and compatible, to the maximum extent practicable, with the existing ... practices” of the respondents.¹⁴

A. The Information Collection Creates a Significant and Unjustified Burden on Video Programming Distributors Who Do Not Have Existing Relationships with Telephone Directory Publishers

OMB should disapprove the portion of Section 79.1(i)(2) that applies to telephone directory publication because the rule does not reduce “to the extent practicable and appropriate the burden” on the nationwide MVPDs that are subject to the rule. Rather, the rule creates a

¹¹ *Closed Captioning Order*, 23 FCC Rcd at 16685; 47 C.F.R. § 79.1(i). Although the Commission’s order is final, the rule is not effective due to the pending OMB approval process.

¹² *Id.*, n. 85 (emphasis added).

¹³ 44 U.S.C. §§ 3506(c)(3)(A), (C).

¹⁴ 44 U.S.C. § 3506(c)(3)(E).

significant and unjustified burden that is well beyond the Commission's estimate of time and monetary costs for respondents.¹⁵ This is particularly true when the telephone directory requirement is compared with the website and billing statement requirements, for both of which the Commission explicitly stated that a distributor was not required to create a new means of communicating with viewers simply to provide closed captioning information. In certifying to OMB that the requirement to publish closed captioning contact information in telephone directories does not violate the PRA, it appears that the Commission mistakenly believed either (a) that all video programming distributors already directly publish contact information in local telephone directories, or (b) that the requirement to create a relationship with local telephone directory publishers in order to include closed captioning contact information would not be an undue burden. Neither of these assumptions is correct.

First, DISH Network, as a nationwide provider of video programming services, does not directly advertise or otherwise place commercial listings in local telephone directories.¹⁶ As a national provider, DISH Network maintains a national toll-free telephone number and a national comprehensive website for customer support. Accordingly, DISH Network does not have relationships with publishers of local telephone directories. Thus, in order to comply with the information collection requirement to include in telephone directories contact information for the processing of closed captioning complaints, DISH Network would need to create new relationships with publishers of local telephone directories. Thus, the rule violates the PRA

¹⁵ See *Notice*, 74 FR at 12360. See also Supporting Statement, OMB Control No. 3060-0761, Section 79.1, Closed Captioning, CG Docket No. 05-231 (March 2009) at 25.

¹⁶ Third-party retail partners that sell DISH Network service may independently place advertisements in local directories promoting their business, which may include DISH Network satellite service. DISH Network does not directly use local directories as a means to communicate with existing subscribers about closed captioning or any other DISH Network service related issues.

requirement that a new or modified information collection be “consistent and compatible, to the maximum extent practicable, with the existing ... practices” of the respondents.¹⁷

Moreover, due to DISH Network’s satellite technology and nationwide footprint, the company would need to create new relationships with the local telephone directory provider in virtually every community in the U.S., big and small, in order to ensure that the relevant information was published in a telephone directory in every area served by DISH Network. DISH Network currently does not have any mechanism in place that would allow the company to easily identify and contact directory publishers in all of these communities. To do so, DISH Network would need to hire new personnel and/or divert existing resources for this purpose. Thus, this requirement would impose financial and personnel burdens well beyond the Commission’s estimate and well beyond any reasonable burden that would be justified by the Commission’s goal of publicizing closed captioning complaint contact information.¹⁸

B. The Information Collection Lacks Practical Utility, and the Commission Has Indicated That No New Means of Consumer Communication Are Necessary to Comply With the Rule

The proposed information collection not only is burdensome, but also is not an effective communications tool as applied to DISH Network. Because DISH Network currently does not directly advertise in local telephone directories, this is not a source that DISH Network subscribers look to for purposes of contacting their MVPD. Rather, they turn to the toll-free telephone number and/or website, where the type of information required by the Commission is provided in an easily accessible manner. Because of our direct billing relationship with our

¹⁷ 44 U.S.C. § 3506(c)(3)(E).

¹⁸ See Notice, 74 FR at 12360. The goal is that “with this contact information, consumers can more easily and promptly contact the appropriate person or office at a video programming distributor to report closed captioning.” *Id.*

subscribers, our customers have no need to look to local telephone directories for information about our service offerings. In stark contrast to information provided on their subscriber bill and on the main DISH Network website, it is not realistic to expect that DISH Network subscribers will meaningfully utilize the closed captioning information required by the Commission if it were also published in local telephone directories by DISH Network. Thus, there is no practical utility in the requirement that a nationwide MVPD, such as DISH Network, list closed captioning contact information in telephone directories.

In addition, the FCC has stated that video programming distributors need not create new publicity vehicles or means of communicating with consumers in order to make available the closed captioning contact information. For example, in the *Closed Captioning Order*, the Commission explicitly stated that if a distributor “does not have a website, it is not required to establish one in order to satisfy this contact information requirement.”¹⁹ Similarly, the Commission indicated that a distributor is required to publish contact information on billing statements only “to the extent billing statements are issued.”²⁰ Thus, with respect to two of the three required methods for listing closed captioning contact information, the Commission recognized that some providers may not already use these vehicles and should not be required to establish them. The FCC did not address or explain this asymmetry between the various approaches in the *Closed Captioning Order*. It appears, however, that the Commission believes that its goal of allowing consumers to easily and promptly contact video programming distributors in the event of closed captioning complaints is not undermined if a distributor is not able to publish contact information in all three of these places. Accordingly, the Commission cannot justify the practical utility of requiring telephone directory publication where no previous

¹⁹ *Closed Captioning Order*, 23 FCC Rcd at 16685, n. 85.

²⁰ *Id.* at 16685.

relationship exists with directory publishers and subscribers currently do not rely on telephone directories for purposes of contacting the provider.

III. CONCLUSION

DISH Network requests OMB to disapprove the information collection or, at a minimum, return the information collection to the Commission with instructions to make the material change necessary to address these PRA violations.

Respectfully submitted,

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