

To: All Television Clients

October 3, 2008

Television Station Fined \$25,000 For Not Providing Timely Visual Emergency Information That Was Provided Aurally

The FCC's Enforcement Bureau recently affirmed a \$25,000 forfeiture order against a television station for its repeated violation of Section 79.2 of the FCC's rules, "Accessibility of Programming Providing Emergency Information." Section 79.2 requires that, among other things, video programming distributors, including television stations, that provide emergency information in the audio portion of programming must also provide such information to persons with hearing disabilities, either through closed captioning or by another method of video presentation.

Emergency information is defined as "[i]nformation about a current emergency, that is intended to further the protection of life, health, safety and property, *i.e.*, critical details regarding the emergency and how to respond to the emergency." Types of applicable emergencies include tornadoes, hurricanes, floods, earthquakes, icing conditions, heavy snow, widespread fires, widespread power failures, industrial explosions, civil disorders, school closings resulting from such conditions, and warnings of impending changes in weather.

In this case, over a period of two days, the television station reported emergency information in connection with area wildfires. A viewer filed a complaint with the FCC claiming that visual notices of the emergency announcements were not made available in a timely fashion to hearing disabled persons.

Section 79.2 does not specify how soon after an audio presentation of emergency information a video programming provider must present a video notice of that emergency information, but the FCC indicated that any visual presentation of emergency information must be "simultaneous or nearly simultaneous" with the aural emergency information in order to provide persons with hearing disabilities the same accessibility to emergency information.

Here, the Enforcement Bureau elected to find violations only for the 22 instances where visual information was not provided either 30 minutes before or after the same information was provided aurally. With a possible forfeiture of \$8,000 per violation, the total fine could have been \$176,000; however, the Enforcement Bureau acknowledged that such amount would have been excessive, and reduced the total forfeiture to \$25,000.

We recommend that you familiarize yourself with the FCC's emergency programming rules, and that you be prepared to provide emergency information visually nearly simultaneously with the aural presentation of that emergency information. Should you have any questions concerning these rules, please contact an attorney in our office.

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This memorandum is intended only as a general discussion of these issues and should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired. To discuss any of the issues presented here, please contact any attorney in our office.