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FCC Reminds Video Distributors Of Emergency Broadcast Obligations

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In the midst of wildfire season in California and hurricane season on the coasts, the Commission has issued a public notice reminding stations *everywhere* – not just in Cali or on the coasts – of their obligation to make emergency information accessible to those with either visual or hearing impairments. As stations in the danger zones have learned from past experience, there are no exceptions to this requirement, and no excuses will be accepted. The latest public notice makes clear that this policy applies in areas well away from the zones directly affected by the emergency conditions.

The obligations in question here arise from Section 79.2 of the rules, which requires that all video distributors make “emergency information” “accessible” to those with visual or hearing disabilities (the latter by closed captioning or other visual means). “Emergency information” is defined by the Commission to mean information “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”.

The Commission has emphasized in the past that this provision allows for *no* exemptions, even in cases of news which is breaking quickly. Importantly, the rule reaches not only scripted presentations, but ad lib statements made in the course of live coverage. In 2005, the Commission underscored this obligation by issuing fines to a number of stations after reviewing days’ and days’ worth of recordings of the stations’ coverage of wildfires, hurricanes and tornados. Substantial fines – north of \$20,000 in some cases – have been the result of any failures in this area, even when the omissions were relatively small and infrequent, particularly in the context of extended, days-long coverage. (Example: One station was fined because, during coverage of wildfires, it aired a representative of the American Lung Association who gave the unsurprising advice that viewers should stay indoors, run their air conditioners with a filter, and avoid exercise. The station’s failure to include visual presentation, by captioning or otherwise, of that advice contributed to a \$20,000 fine.)

The bottom line is this: **All** emergency information aired by the station which includes information about what areas are affected, evacuation routes, methods of taking shelter in

place, and the like, *must* be made available both visually and aurally, *without exception*. The substance of even an off-hand remark, if it contains any relevant information, must be conveyed in a way that makes it accessible to the visually and hearing disabled.

The method of providing this information can be somewhat crude, such as holding up a handwritten board or reading information aloud, but regardless of how it is done, it must be done. Any crawls must be accompanied by an aural tone to alert visually impaired viewers to tune to another information source, such as the radio. Obviously, the Commission wants to be sure that everyone potentially in danger knows what to do to remain safe. While some might think that the Commission has sometimes gone a bit overboard in requiring even seemingly casual observations to be conveyed, at least most would agree that protection of life and property from imminent danger is an important goal.

The recent public notice also underscores the wide geographical range of the requirement. We are now reminded that the absolute accessibility requirement applies not only to areas in actual danger but also to those which might be logical evacuation areas. Along these lines, the concept of “emergency information” includes, for example, where evacuees from the danger zone may obtain relief assistance. (This interpretation could come as a surprise to stations located many miles away from a natural disaster, although the Commission did invoke this reading of the rule in 2005, in the case of Hurricane Katrina.)

The Commission also reminds us that some national events might be of local interest and subject to the requirements of Section 79.2, regardless of the lack of any actual local impact. It does not, however, provide any guidance to stations on figuring out when an event might fit into this category.

Network affiliates in the top 25 markets have a significantly greater burden in this area. Those stations are required, by hook or by crook, to arrange for closed captioning services. The FCC cuts such stations a little slack by allowing them time for the captioning personnel to travel to the station, but in the meantime any emergency information being broadcast must be made accessible to the disabled by some method. Additionally, depending on affiliation and market, some stations are allowed to use the electronic newsroom technique (ENT). Such stations must make sure that their ENT systems caption non-scripted materials; if the systems don’t caption such materials – whether automatically or as a matter of choice by the station – the station must still make sure that all emergency information is disabled-accessible in some manner.

Perhaps most importantly, the Commission emphasizes that it is the responsibility of the

local station to make sure that *all* emergency information is accessible, regardless of whether the station is viewed over the air or on cable or satellite.