

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Waterman Broadcasting Corp. of Florida, Inc.
Licensee of WBBH-TV
Fort Myers-Naples, FL
Montclair Communications, Inc.
Licensee of WZVN-TV
Fort Myers-Naples, FL
File No. EB-04-TC-145
Facility ID No. 71085
NAL/Acct. No. 200532170013
FRN: 0001807965
File No. EB-04-TC-150
Facility ID No. 19183
NAL/Acct. No. 200532170014
FRN: 0001733518

Apparent Liability for Forfeiture

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 8, 2005

Released: August 9, 2005

By the Acting Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"),¹ we find that Waterman Broadcasting Corp. ("Waterman") and Montclair Communications, Inc. ("Montclair") apparently willfully or repeatedly violated section 713 of the Communications Act of 1934, as amended (the "Act"),² and section 79.2(b)(1)(i) of the Commission's rules.³ Waterman and Montclair⁴ apparently violated the Act and the Commission's rules by failing in a timely manner to make accessible to persons with hearing disabilities emergency information that they provided aurally in their programming for WBBH-TV and WZVN-TV during the Hurricane Charley emergency in the Fort Myers-Naples, Florida area on August 12 and August 13, 2004. Based upon our review of the facts and circumstances, we find that each of the stations is apparently liable for a forfeiture in the amount of \$24,000.

¹See 47 U.S.C. § 503(b)(4)(A). The Commission has authority under this section of the Act to assess a forfeiture penalty against a broadcast licensee if the Commission determines that the licensee has "willfully or repeatedly" failed to comply with the provisions of the Act or with any rule, regulation, or order issued by the Commission under the Act. For a violation to be willful, it need not be intentional. Southern California Broadcasting Co., 6 FCC Rcd 4387 (1991).

²47 U.S.C. § 613.

³47 C.F.R. § 79.2(b)(1)(i).

⁴Waterman Broadcasting Corp. and Montclair Communications, Inc. hereinafter referred to jointly as "the stations."

II. BACKGROUND

2. Approximately one in ten Americans – 28 million – has some level of hearing loss; in the population of people over 65 years of age that number increases to one in three.⁵ As the median age of the population continues to rise, the proportion of Americans with hearing loss will likely increase.⁶ According to the American Speech-Language-Hearing Association, “[t]he number of Americans with a hearing loss has evidentially doubled during the past 30 years. Data gleaned from Federal surveys illustrate the following trend of prevalence [of hearing loss] for individuals aged three years or older: 13.2 million (1971), 14.2 million (1977), 20.3 million (1991), and 24.2 million (1993).”⁷ Access to television information in an emergency is critical for all Americans, including this important and growing segment of our population.

A. Requirements for Accessibility of Emergency Information

3. Congress recognized how important visual access to televised information is to individuals with hearing disabilities, and required the Commission, pursuant to section 713 of the Act,⁸ to prescribe rules regarding Video Programming Accessibility. Pursuant to this direction, and out of a concern that critical emergency information be available to every television viewer, including persons with hearing disabilities, the Commission adopted section 79.2 of the rules.⁹ Section 79.2(b)(1)(i) requires video programming distributors providing emergency information in the audio portion of programming to provide persons with hearing disabilities the same access to such information, either through a method of closed captioning or another method of visual presentation.¹⁰

4. As noted, the Commission’s rules do not mandate closed captioning,¹¹ but instead allow for any number of means of visual presentation, including, but not limited to, open captioning, crawls, or scrolls.¹² The Commission stated that it was permitting these alternatives because it was concerned about the limited “real-time” captioning resources available and their current costs.¹³ The Commission made clear, however, that regardless of the method of visual presentation used, video programming distributors must “use [a] method of visual presentation [that] ensure[s] the same accessibility [to emergency information] for persons with hearing disabilities as for any other viewer, as required by the rule.”¹⁴

⁵See Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, *Report and Order*, 18 FCC Rcd 16753, at para. 5 (2003) (*HAC Report and Order*); *Erratum*, WT Docket No. 01-309, 18 FCC Rcd 18047 (2003) (citations omitted).

⁶See *HAC Report and Order*, 18 FCC Rcd 16753, at para. 5.

⁷http://www.asha.org/public/hearing/disorders/prevalence_adults.htm (visited May 24, 2005) (citations omitted).

⁸47 U.S.C § 613.

⁹*Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, and Accessibility of Emergency Programming*, Second Report and Order, 15 FCC Rcd 6615, 6621-22, para. 12 (2000) (“*Second Report and Order*”).

¹⁰47 C.F.R. § 79.2(b)(1)(i).

¹¹*Second Report and Order*, 15 FCC Rcd at 6620, para. 11.

¹²*Id.* at 6618, para. 8.

¹³*Id.* at 6621, para. 11.

¹⁴*Id.* at 6623-24, para. 16.

Methods could include already prepared signs, charts, or handwritten information contained on a white board.¹⁵

5. The Commission mandated equal accessibility because emergency information is of “equal or greater importance to persons with hearing disabilities, and television plays a critical role in its dissemination.”¹⁶ Further, it is clear from the Commission’s definition of emergency information, *i.e.*, information about a “current” emergency that provides critical details concerning “how to respond to the emergency,”¹⁷ that the Commission required video programming distributors to display emergency information in a timely manner so that viewers can respond to a current emergency without endangering their safety. The Commission long ago recognized the importance of timeliness of providing emergency information, noting that “if visual notification is delayed, it should not be unreasonably delayed so that a hearing impaired person would not have time to take reasonable and constructive precautions with regard to the emergency.”¹⁸

6. Emergency information is defined in section 79.2 as “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,”¹⁹ not merely the existence of an emergency.²⁰ The Commission further stated that critical details included, among other things, “*specific details regarding the areas that will be affected by the emergency, evacuation orders, detailed descriptions of areas to be evacuated, specific evacuation routes, approved shelters or the way to take shelter in one’s home, instructions on how to secure personal property, road closures, and how to obtain relief assistance.*”²¹ The rule provides the following non-exhaustive list of examples of the types of emergencies covered: “tornadoes, *hurricanes*, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, school closings and changes in school bus schedules resulting from such conditions, and warnings and watches of impending changes in weather.”²² Since adoption of the rules, the Commission has reminded video

¹⁵See generally, *Amendment of Part 73 of the Rules to Establish Requirements for Captioning of Emergency Messages on Television*, Report and Order, Docket No. 20659, 61 FCC2d 18 (1976) (*1976 Order*), at paras. 9, 11 and Appendix B (relating to prior visual presentation requirements and noting potential use of slides and hand printed messages).

¹⁶*Second Report and Order*, 15 FCC Rcd at 6619-20, paras. 9, 10 (citing examples of the importance of timely visual emergency information including an inaccessible tornado warning that caused delay in evacuation of children and an inaccessible water contamination warning that caused persons with hearing disabilities to needlessly incur health risks of which they were not initially aware). In attempting to determine the scope of this rule, the Commission expressed concern that the disabilities community have available “sufficient information” with the “same immediacy” as other viewers. *Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, and Accessibility of Emergency Programming*, Further Notice of Proposed Rulemaking, 13 FCC Rcd 5627, 5631 (1998). In addition to the plain meaning of the “emergency information,” the nature of the critical details described in section 79.2(a)(2) makes clear that timely visual presentation is required.

¹⁷47 C.F.R. § 79.2(a)(2).

¹⁸*1976 Order*, 61 FCC2d 18, at para. 11.

¹⁹47 C.F.R. § 79.2(a)(2).

²⁰*Second Report and Order*, 15 FCC Rcd at 6617, para. 5.

²¹Note to 47 C.F.R. § 79.2(a)(2) (emphasis added).

²²47 C.F.R. § 79.2(a)(2) (emphasis added).

programming distributors of their obligation to make emergency information accessible no fewer than five times.²³

B. The Investigation

7. On August 13, 2004, Hurricane Charley hit Florida's western coast between Fort Myers and Punta Gorda causing deaths, injuries, and extensive damage to property and natural resources in Florida.²⁴ A Category 4 Hurricane, Hurricane Charley came ashore with winds of 145 miles per hour, later reaching 180 miles per hour and causing ten foot waves.²⁵ Hurricane Charley is reported to have been the most powerful storm to hit the Fort Myers area since 1960.²⁶ WBBH-TV and WZVN-TV broadcast emergency information regarding Hurricane Charley on August 12 and 13, 2004.²⁷

8. During this coverage, the stations provided their viewers with emergency information, including the closing of government facilities, evacuation routes, shelters, the course of the storm, and the predicted time and counties that Hurricane Charley would hit. Waterman and Montclair joined forces, pursuant to a pre-November 5, 1996 time brokerage agreement, to bring greater resources to bear on coverage of Hurricane Charley.²⁸ Beginning at 11:30 p.m. on August 12, the stations began simulcasting special

²³See, e.g., Public Notice, "Reminder to Video Programming Distributors of Obligation to Make Emergency Information Accessible to Persons with Hearing Disabilities," DA 01-1930, 16 FCC Rcd 15348 (2001); Public Notice, "Reminder to Video Programming Distributors of Obligation to Make Emergency Information Accessible to Persons with Hearing or Vision Disabilities," 17 FCC Rcd 14614 (2002); Public Notice, "Reminder to Video Programming Distributors of Obligation to Make Emergency Information Accessible to Persons with Hearing or Vision Disabilities," 18 FCC Rcd 14670 (2003); Public Notice, "Reminder to Video Programming Distributors of Obligations to Make Emergency Information Accessible to Persons with Hearing or Vision Disabilities," 19 FCC Rcd 9882 (2004); Public Notice, "Reminder to Video Programming Distributors of Obligation to Make Emergency Information Accessible to Persons with Hearing Disabilities," 20 FCC Rcd 5918, (2005).

²⁴See <http://www.cbsnews.com/stories/2004/08/14/national/main636019.shtml>, *Hurricane Charley Comes Ashore*, August 14, 2004 (visited April 18, 2005).

²⁵*Id.* Hurricane Charley was classified as a Tropical Storm on August 11, but was upgraded to a Category 2 Hurricane by 2:00 p.m. on August 12. Hurricane Charley developed into a Category 3 Hurricane by 11:00 a.m. on August 13, and a Category 4 Hurricane by 2:00 p.m. on August 13. Letter from Steven H. Pontius, Executive Vice President & General Manager, WBBH-TV, Division of Waterman Broadcasting, to Janet Sievert, Attorney, Telecommunications Consumer Division, Enforcement Bureau, FCC, at n.2 (January 17, 2005) ("*Waterman Response Letter*").

²⁶<http://www.cnn.com/2004/WEATHER/08/14/storms/+hurricane+Charley>, *Weather Charley Death Toll at 13*, August 15, 2004 (visited April 18, 2005).

²⁷Waterman provided coverage of Hurricane Charley from August 12 through 20, 2004, while Montclair provided coverage of Hurricane Charley from August 11 through 19, 2004. Because Waterman's and Montclair's coverage on August 12 and 13 was during the height of the emergency, as reflected in the informal complaint, and Waterman's coverage August 14 through 20 and Montclair's coverage August 14 through 19 generally dealt with the aftermath of the hurricane, the Bureau focused its investigation on August 12 and 13. See *Waterman Response Letter* at 5; Letter from Lara K. Kunkler, President of Montclair Communications, Inc & General Manager, WZVN-TV, to Janet Sievert, Attorney, Telecommunications Consumer Division, Enforcement Bureau, FCC (January 18, 2005 ("*Montclair Response Letter*".) See also Informal Complaint, File No. 04-N93233, filed September 7, 2004 ("*Informal Complaint*")

²⁸See *Waterman Response Letter* at 2; *Montclair Response Letter* at 1. Waterman provides programming, advertising and certain other services to Montclair pursuant to the pre-November 5, 1996 time brokerage agreement.

coverage of Hurricane Charley and preempted regular programming and provided 24-hour coverage of the storm.²⁹

9. After receiving a complaint about the stations' coverage,³⁰ the Enforcement Bureau ("Bureau") launched an investigation into Waterman's broadcasts on WBBH-TV and Montclair's broadcasts on WZVN-TV. The Bureau sent Letters of Inquiry to the stations, directing the stations to provide, among other things, videotapes for August 12, 2004 and August 13, 2004 of Waterman's coverage of Hurricane Charley on WBBH-TV and Montclair's coverage of Hurricane Charley on WZVN-TV. The stations filed responses, including the requested videotapes.³¹

10. The Bureau has reviewed the stations' videotapes of programming along with other material the stations provided in response to the Bureau's Letters of Inquiry, and identified several instances in which the stations aurally provided emergency information but failed to provide visual presentation of emergency information in violation of section 79.2(b)(1)(i) of our rules. These instances, described below at paragraphs 14-19, form the basis of the NAL.

III. DISCUSSION

11. As an initial matter, we note that the stations are "video programming distributors" subject to section 79.2 of the Commission's rules. Section 79.1(a)(2) defines a video programming distributor as "[a]ny television broadcast station licensed by the Commission...."³² As broadcast licensees, the stations must comply with the Commission's rules regarding the accessibility of emergency information to individuals with hearing disabilities.

12. We now turn to an analysis of the information broadcast by the stations over WBBH-TV and WZVN-TV during the time period at issue. We note at the outset that Hurricane Charley caused significant injuries to persons, loss of life, and extensive damage to property and natural resources in the Fort Myers-Naples area.³³ Waterman's coverage of Hurricane Charley, which lasted eight days,³⁴ and

²⁹Montclair incorporates by reference Waterman's submission concerning policies that are implemented jointly by Waterman and Montclair, videotapes and Attachment 2, for August 13, detailing the programming carried by both stations. See *Montclair Response Letter* at 1 and 3.

³⁰See *Informal Complaint*.

³¹Letter from Colleen K. Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC, to Steven H. Pontius, Vice President & General Manager, Waterman Broadcasting Corp., of Florida (November 17, 2004) ("*Waterman Letter of Inquiry*"); Letter from Colleen K. Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC, to Lara K. Kunkler, President, Montclair Communications, Inc. (November 17, 2004) ("*Montclair Letter of Inquiry*").

³²47 C.F.R. § 79.1(a)(2).

³³See, e.g., WBBH-TV Videotapes; <http://www.cnn.com/2004/WEATHER/08/14/storms/index.html>, *Weather – Charley Death Toll at 13*, August 15, 2004 (visited April 18, 2005).

³⁴See *Waterman Response Letter* at 5-6. On August 12, Waterman provided hurricane information during its regularly scheduled newscasts, newsbreaks throughout the day, one-hour special, and crawls. Waterman's regularly scheduled newscast aired from 5:00 a.m. to 7:00 a.m., 12:00 p.m. to 1:00 p.m., 4:00 p.m. to 6:30 p.m., and 11:00 p.m. to 11:30 p.m.; regularly scheduled newsbreaks aired at approximately 8, 26, and 56 minutes after the hours of 7:00 a.m., 8:00 a.m. and 9:00 a.m.; two to three minute updates of Hurricane Charley aired during breaks at 11:30 a.m., 1:29 p.m., 2:00 p.m., 2:30 p.m., 3:00 p.m., 7:00 p.m., 7:30 p.m., 9:28 p.m., and 9:59 p.m.; the one-hour hurricane special aired from 8:00 to 9:00 p.m.; the brief information crawls aired at 10:15 a.m., 10:44 a.m., and 11:16 a.m.; the continuous crawl containing safety and preparedness information began at 11:23 a.m.

Montclair's coverage, which lasted seven days,³⁵ illustrate the urgency and danger of the situation. The stations' anchors and reporters repeated emergency information many times, including evacuation orders, up-to-date information on the path of the storm, anticipated times the storm would hit particular communities, and road and bridge closures. The stations' personnel characterized the storm as a very serious threat to life and property in southwest Florida.³⁶ While the stations visually presented some information during this period, it appears that in several instances the stations did not make critical information available to persons with hearing disabilities.

13. Hurricane Charley was an emergency covered by the Commission's emergency visual access rules. Further, the record shows that on August 13, 2004 the stations aurally provided critical emergency information on road and bridge closures, and evacuation details, but failed to provide visual presentation of this information. Below we describe each of the three apparent violations that form the basis of this NAL, and we address each of the stations' defenses. At the outset, we note that Hurricane Charley's destructive force and rapidly changing course made it vital that the stations provide emergency information visually to avoid serious bodily harm or loss of life for persons with hearing disabilities.

14. With respect to the first apparent violation, on August 13 at 1:58 p.m., newscaster Heather Turco stated that "[t]he biggest news, the Sanibel Causeway is shut down, you will not be able to get on it. They tell us, the only way to get off the island is to swim off."³⁷ Similarly, at 2:24 p.m., Ms. Turco announced that "[t]he Sanibel Causeway is shut down" and after "3:45 or 4:00 it is no longer safe to go to shelters, if you want to go, go now after 4:00 no longer safe."³⁸ Based on our review of the videotapes and the stations' written material, we find that the stations did not provide visual access to this emergency information.

15. The stations do not deny that they failed to present this information visually. Instead they argue that (i) while the information may have been "useful" to viewers, the most critical information during this period was the "take shelter ASAP warnings" the stations presented in the crawls; and (ii) the shelter information was not a critical detail about the emergency situation.³⁹ We disagree on both counts. First, the warnings regarding the Sanibel Causeway clearly constitute "road closure" information covered by the rule.⁴⁰ The Sanibel Causeway is a particularly important road as it is the only means on and off

³⁵See *Montclair Response Letter* at 3-4. On August 12, Montclair provided hurricane information during its regularly scheduled newscasts, newsbreaks throughout the day, one-hour special, and crawls. Montclair's regularly scheduled newscast aired from 5:00 a.m. to 7:00 a.m., 6:00 p.m. to 6:30 p.m., and 11:00 p.m. to 11:30 p.m.; regularly scheduled newsbreaks aired at approximately 7:08 a.m., 7:23 a.m., 7:38 a.m., 7:56 a.m., 8:08 a.m., 8:26 a.m., 8:34 a.m., 8:37 a.m.; six minute news interruptions at 9:26 a.m., 10:00 a.m., 11:00 a.m., 11:34 a.m., 1:00 p.m., 1:34 p.m., 2:34 p.m., 3:00 p.m., 4:00 p.m., 4:30 p.m., 4:59 p.m., 5:29 p.m., 7:00 p.m., 7:30 p.m., 8:00 p.m., and 10:30 p.m.; the one-hour hurricane special aired from 9:00 p.m. to 10:00 p.m.; the brief information crawls aired at 10:15 a.m., 10:44 a.m., and 11:16 a.m.; the continuous crawl containing safety and preparedness information started at 12:01 a.m., and aired continuously throughout the day starting at 11:00 a.m.; 45 promotional announcements aired throughout the day regarding safety and preparedness techniques and announcing the planned simulcast with WBBH-TV; and 31 four-second identifiers providing coordinates and projected track of the hurricane.

³⁶See *Waterman Response Letter*, VHS Tape #4, 1:21 p.m. August 13, 2004. See also *Waterman Response Letter*, Attachment 2-e at 19. We note that *Waterman's Response Letter* states that this occurred at 1:24 p.m.; see also *Montclair Response Letter*, VHS Tape #4, 1:21 p.m. August 13, 2004. See also *Montclair Response Letter*, Attachment 2-e at 19.

³⁷*Waterman Response Letter*, Attachment 2-f at 23; *Montclair Response Letter*, Attachment 2-f at 2.

³⁸*Waterman Response Letter*, Attachment 2-f at 36; *Montclair Response Letter*, Attachment 2-f at 36.

³⁹*Waterman Response Letter*, Attachment 2-f at 23; *Montclair Response Letter*, Attachment 2-f at 23.

⁴⁰47 C.F.R. § 79.2(a)(2).

Sanibel Island; without this information, persons with hearing disabilities had no way of knowing that they would not be allowed to cross the Causeway, placing them in a potentially dangerous situation. Second, the information that it was no longer safe to go to a shelter clearly is information to “further the protection of life, health, safety and property”⁴¹ Failure to provide this information visually left viewers with hearing disabilities in the potentially dangerous situation of trying to reach shelter when it was clearly too late for any such attempts. We find the stations’ failure to provide visual access to this emergency information an apparent violation of section 79.2(b)(1)(i).

16. The second apparent violation occurred on August 13 at 2:21, when newscaster Robert Van Winkle announced “warning now to Glades County residences, there’s a mandatory evacuation, effective immediately for people in manufactured homes and low lying areas are required to leave and seek shelter.”⁴² Based on our review of the videotapes and the stations’ written material, we find that the stations did not provide visual access to this emergency information.

17. As with the first apparent violation, the stations do not deny that they failed to provide this information visually. Instead, the stations assert that while this information may have been “useful” to viewers, in the stations’ good faith judgment the radar graphic provided the necessary details to indicate the severity and location of the storm.⁴³ We disagree. The Commission provided evacuation orders as a specific example of emergency information that must be visually provided.⁴⁴ The stations’ radar graphic did not convey the critical information that Glades County was under a mandatory evacuation. Without visual presentation of the evacuation order, viewers with hearing disabilities in Glades County had no way to learn of the mandatory evacuation order. We find the stations’ failure to provide visual access to this critical emergency information an apparent violation of section 79.2(b)(1)(i).

18. The third apparent violation occurred on August 13 at 2:26 p.m., when newscaster Jim Reif announced that “[w]e just got [an] urgent request from Emergency Management Office Charlotte County, urging residents at this point, do not evacuate, it’s too dangerous, stay where you are hunker down as best you can. Residents of Charlotte County, Punta Gorda, Port Charlotte and all around Charlotte Harbor, stay where you are.”⁴⁵ Based on our review of the videotapes and the stations’ written material, we find that the stations did not provide visual access to this emergency information.

19. Again, the stations do not deny that they failed to provide visual access to the information that residents of these specific areas should no longer evacuate. Instead, the stations argue that sufficient information was provided visually in crawls at 2:33 p.m. and 3:37 p.m.⁴⁶ Again, we disagree. The stations’ crawls at these times provided only generic warnings that “Charley was CAT4 storm and viewers should seek shelter immediately.”⁴⁷ The aural location-specific information is clearly information “intended to further the protection of life, health, safety . . .” and “specific details regarding the areas that will be affected by the emergency.”⁴⁸ Without visual presentation of the Charlotte County Emergency Management Office warning, hearing impaired residents of Charlotte County had no way of knowing the generic warning meant to stay where they were and not to seek other shelter. We find the

⁴¹47C.F.R. 79.2(a)(2).

⁴²*Waterman Response Letter*, Attachment 2-f at 34; *Montclair Response Letter*, Attachment 2-f at 34

⁴³*Waterman Response Letter*, Attachment 2-f at 34-35; *Montclair Response Letter*, Attachment 2-f at 34-35.

⁴⁴Note to 47 C.F.R. § 79.2(a)(2).

⁴⁵*Waterman Response Letter*, Attachment 2-f at 38; *Montclair Response Letter*, Attachment 2-f at 38.

⁴⁶*Waterman Response Letter*, Attachment 2-f at 38; *Montclair Response Letter*, Attachment 2-f at 38.

⁴⁷*Waterman Response Letter*, Attachment 2-g at 2, 3; *Montclair Response Letter*, Attachment 2-g at 2.

⁴⁸79.2(a)(2).

stations' failure to provide visual access to this emergency information an apparent violation of section 79.2(b)(1)(i).

20. In addition to their incident-specific arguments, the stations argue generally that the *Second Report and Order* provided licensees with discretion to use good faith judgment regarding the details that they must make visually accessible.⁴⁹ The stations appear to contend that the Commission's statement in the *Second Report and Order* that "[i]n determining whether particular details need to be made accessible, we will permit programmers to rely on their good faith judgments"⁵⁰ gives them discretion to determine where and when emergency information should be presented visually. This contention is wrong. As we have stated in the past,⁵¹ although the rule allows programmers to exercise discretion as to whether to display non-critical details of emergency information, programmers must present basic, critical information about a hurricane emergency such as road closures, shelters, and evacuation details. The expansive interpretation of the good faith exception asserted by the stations in this matter would swallow the rule and render it wholly ineffective.

IV. FORFEITURE AMOUNT

21. For the time at issue in this case, section 503(b)(2)(A) of the Communications Act authorized the Commission to assess a forfeiture of up to \$27,500 for each violation of the Act or of any rule, regulation, or order issued by the Commission under the Act.⁵² In exercising such authority, we are required to take into account "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."⁵³ Based on our review of the record, we conclude that Waterman and Montclair are apparently liable for the willful or repeated violation of our rules.

22. The Commission's forfeiture guidelines do not currently establish a base forfeiture amount for violations of section 79.2(b)(1)(i). Enforcement of the emergency accessibility rules is important as lives may depend on compliance. As we have in previous emergency visual access cases,⁵⁴ we find that

⁴⁹*Waterman Response Letter* at 2, 9, 12, Exhibit 2; *see also Montclair Response Letter* at 5 -6.

⁵⁰*Second Report and Order*, 15 FCC Rcd at 6617, para. 5 (emphasis added). For example, if the station reported aurally that an evacuation order was announced at 1:00 p.m., it could reasonably exercise its discretion to omit the time the order was announced as long as the station visually presented the existence of the evacuation order.

⁵¹*See NBC Telemundo License Co., Licensee of WRC-TV Washington, D.C., File No. EB-04-TC-101, Notice of Apparent Liability of Forfeiture*, DA 05-1512, at para. 13 (May 2005) ("*WRC NAL*").

⁵²Specifically, section 503(b)(2)(A) provides for forfeitures up to \$25,000 for each violation or a maximum of \$250,000 for each continuing violation by (i) a broadcast station licensee or permittee, (ii) a cable television operator, or (iii) an applicant for any broadcast or cable television operator license, permit, certificate or similar instrument. 47 U.S.C. § 503(b)(2)(A). The Commission amended its rules by adding a new subsection to its monetary forfeiture provisions that incorporates by reference the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996 (DCIA), Pub L. No. 104-134, § 31001, 110 Stat. 1321 (1996). Thus, the maximum statutory forfeiture per violation pursuant to section 503(b)(2)(A) increased from \$25,000 to \$27,500. *See Amendment of Section 1.80(b) of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 15 FCC Rcd. 18,221 (2000). We note that the Commission recently increased the per violation amount again to \$32,500. *See Amendment of Section 1.80(b) of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 19 FCC Rcd 10945 (2004); (establishing an effective date of September 7, 2004).

⁵³*See* 47 U.S.C. § 503(b)(2)(D); *see also The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 17,087 (1997); *recon. denied*, 15 FCC Rcd 303 (1999).

⁵⁴*See* ACC Licensee, Inc., Licensee of WJLA-TV Washington, D.C., File No. EB-04-TC-100, *Notice of Apparent Liability of Forfeiture*, DA 05-1511 (May 2005); *WRC NAL*; Fox Television Stations, Inc. Licensee of WTTG(TV) Washington, D.C., File No. EB-04-TC-104, *Notice of Apparent Liability of Forfeiture*, DA 05-1513 (May 2005).

\$8,000, the base forfeiture amount for violations of rules relating to distress and safety frequencies and for failure to install and operate Emergency Alert System (“EAS”) equipment is analogous and warranted for apparent violations of section 79.2(b)(1)(i).⁵⁵ The purpose of the EAS and safety frequencies rules are to warn persons of emergencies, and the purpose of section 79.2(b)(1)(i) is the same. Waterman and Montclair provided aural emergency information without providing visual presentation on three occasions, resulting in three apparent violations of the rule for which we propose a forfeiture. We therefore propose a forfeiture of \$24,000 for each station. Waterman and Montclair will have the opportunity to submit further evidence and arguments in response to this NAL to show that no forfeiture should be imposed or that some lesser amount should be assessed.⁵⁶

V. CONCLUSIONS AND ORDERING CLAUSES

23. We have determined that Waterman Broadcasting, Corp., and Montclair Communications, Inc., have apparently willfully or repeatedly violated section 713 of the Act and section 79.2(b)(1)(i) of the Commission’s rules by failing to make emergency information that they provided to hearing persons accessible to persons with hearing disabilities, resulting in a proposed forfeiture of \$24,000 for each station.

24. Accordingly, IT IS ORDERED, pursuant to section 503(b) of Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and section 1.80 of the Commission’s rules, 47 C.F.R. § 1.80, that Waterman Broadcasting, Corp., IS HEREBY NOTIFIED of an Apparent Liability for Forfeiture in the amount of \$24,000 for willful and repeated violations of section 713 of the Act, 47 U.S.C. § 613, and section 79.2(b)(1)(i) of the Commission’s rules, 47 C.F.R. § 79.2(b)(1)(i), as described in the paragraphs above.

25. IT IS FURTHER ORDERED, pursuant to section 1.80 of the Commission’s rules, 47 C.F.R. § 1.80, that within thirty (30) days of the release of this Notice, Waterman Broadcasting, Corp., SHALL PAY the full amount of the proposed forfeiture OR SHALL FILE a response showing why the proposed forfeiture should not be imposed or should be reduced.⁵⁷

26. IT IS FURTHER ORDERED, pursuant to section 503(b) of Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and section 1.80 of the Commission’s rules, 47 C.F.R. § 1.80, that Montclair Communications, Inc., IS HEREBY NOTIFIED of an Apparent Liability for Forfeiture in the amount of \$24,000 for willful and repeated violations of section 713 of the Act, 47 U.S.C. § 613, and section 79.2(b)(1)(i) of the Commission’s rules, 47 C.F.R. § 79.2(b)(1)(i), as described in the paragraphs above.

27. IT IS FURTHER ORDERED, pursuant to section 1.80 of the Commission’s rules, 47 C.F.R. § 1.80, that within thirty (30) days of the release of this Notice, Montclair Communications, Inc., SHALL

⁵⁵See 47 C.F.R. § 1.80(b)(4).

⁵⁶See 47 U.S.C. § 503(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

⁵⁷If Waterman chooses to respond, it should mail its response to Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W. Room-4C224, Washington, D.C. 20554, and must include the file number listed above. It should also send an electronic copy of its response to Mark Stone, Deputy Chief, Telecommunications Consumers Division, at mark.stone@fcc.gov and Janet Sievert, Senior Attorney, Telecommunications Consumers Division, at janet.sivert@fcc.gov.

PAY the full amount of the proposed forfeiture OR SHALL FILE a response showing why the proposed forfeiture should not be imposed or should be reduced.⁵⁸

28. IT IS FURTHER ORDERED that payment of the forfeiture amount should be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct.No. and FRN No. referenced above. Payment by check or money order must be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box. 73482, Chicago, IL 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving Bank One, and account number 1165259.

29. The Bureau will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

30. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁵⁹

31. IT IS FURTHER ORDERED that copies of this Notice of Apparent Liability for Forfeiture SHALL BE SENT by certified mail to Steven H. Pontius, Executive Vice President & General Manager, Waterman Broadcasting, Corp., WBBH-TV, 3719 Central Avenue, Fort Myers, Florida 33901 and Lara K. Kunkler, President & General Manager, Montclair Communications, Inc., WZVN-TV, 3719 Central Avenue, Fort Myers Florida 33091.

FEDERAL COMMUNICATIONS COMMISSION

Kris A. Monteith
Acting Chief, Enforcement Bureau

⁵⁸If Montclair chooses to respond, it should mail its response to Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W. Room-4C224, Washington, D.C. 20554, and must include the file number listed above. It should also send an electronic copy of its response to Mark Stone, Deputy Chief, Telecommunications Consumers Division, at mark.stone@fcc.gov and Janet Sievert, Senior Attorney, Telecommunications Consumers Division, at janet.sivert@fcc.gov.

⁵⁹7 C.F.R. § 1.1914.