

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

In the Matter of)
Midwest Television, Inc.) File No. EB-04-TC-061
Licensee of KFMB-TV) Facility ID No. 42122
San Diego, CA) NAL/Acct. No. 200532170006
Apparent Liability for Forfeiture) FRN: 0003750775

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 22, 2005

Released: February 23, 2005

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"),¹ we find that Midwest Television, Inc. ("Midwest") 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 Midwest 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 it provided aurally in its programming for KFMB-TV during a wildfires emergency in the San Diego, California area on October 26 and October 27, 2003. Based upon our review of the facts and circumstances, we find Midwest apparently liable for a forfeiture in the amount of \$20,000.

II. BACKGROUND

2. Midwest is the licensee of KFMB-TV⁴ and is a video programming distributor as defined in our rules.⁵ As a video programming distributor, Midwest is obligated to provide to persons with hearing disabilities the same access to emergency information that it provides to listeners of its programming.⁶

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).

⁴Letter from E.D. Trimble, Vice President, Midwest Television and President and Chief Operating Officer, KFMB Stations, to Peter G. Wolfe, Ssenior Attorney, FCC (June 30, 2004) ("Response"), Exhibit 4.

⁵47 C.F.R. § 79.1(a)(2).

3. During the week beginning October 26, 2003, there were wildfires throughout Southern California, including the San Diego area. These wildfires caused loss of life, injuries, and extensive damage to property and natural resources. Due to high winds, these fires spread extremely rapidly, and caused the evacuation of many of San Diego's residents. During this time, Midwest broadcast emergency information regarding the wildfires.

4. After receiving a consumer complaint against KFMB-TV alleging that the station failed to make information on the wildfires accessible to persons with hearing disabilities, the Enforcement Bureau ("Bureau") launched an investigation into Midwest's broadcasts on KFMB-TV that week. We sent a Letter of Inquiry to Midwest, directing Midwest to provide, among other things, videotapes of Midwest's coverage of the wildfires on KFMB-TV.⁷ Midwest filed a response, including the requested videotapes.⁸

5. The Bureau has reviewed Midwest's tapes of KFMB-TV's programming and identified numerous instances where the station aurally provided emergency information but substantially delayed the visual presentation of emergency information, if it provided the visual presentation at all. Some illustrative examples are shown below.⁹

(a) Between 7:29 a.m. and 7:41 a.m.,¹⁰ a representative of the California Department of Forestry ("CDF") reported that Wildcat Canyon Road was closed and a representative of the San Diego County Sheriff's Department reported that Route 67, Scripps Poway Parkway, San Vicente Road and Wildcat Canyon Road were closed. The recorded footage that Midwest provided of its broadcast does not show any visual presentation of this emergency information through at least 6:54 p.m.,¹¹ over eleven hours after the aural presentation.

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⁶47 C.F.R. § 79.2(b)(1)(i).

⁷Letter from Colleen K. Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC, to E.D. Trimble, Vice President, Midwest Television and President and Chief Operating Officer, KFMB Stations, KUSI News (May 26, 2004) ("Letter of Inquiry").

⁸Response, filed June 30, 2004.

⁹The specific instances listed here and in Appendix A, all of which demonstrate Midwest's apparent failure to provide visual access to emergency information, form the basis of this NAL.

¹⁰The examples described in the text all occurred on October 26, 2003. Midwest's videotapes generally do not indicate the time of coverage. However, Midwest did provide written information specifying the dates and times of the broadcasts contained on the videotapes. Response, Exhibit 2. From this written information, we were able to ascertain when emergency information was aurally presented and how long it took to visually present such information, if it was presented at all.

¹¹Midwest did not provide videotape of all its wildfire coverage on October 26 and 27. See Response at 4 ("[f]or Sunday, October 26, there are two tapes covering the approximate time period 7:21 a.m. to 7:00 p.m. and the 11:30 p.m. 35-minute late evening news. For Monday, October 27, there are three tapes covering approximately two hours of regularly scheduled newscasts on that day.") Specifically, Midwest did not provide any videotapes for October 26, 2003 between 6:54 p.m. and 11:30 p.m. and on October 27, 2003 before 5:00 p.m., between 5:30 p.m. and 6:00 p.m., and between 7:00 p.m. and 11:00 p.m. Consequently, we cannot determine whether Midwest, during these gaps of time, visually presented emergency information that it had previously aurally presented. In our description of such cases, we note that Midwest did not make the emergency information accessible through at least the beginning of the missing coverage.

(b) Between 8:38 a.m. and 8:44 a.m., the CDF representative again reported that Wildcat Canyon Road and Route 67 were closed. Midwest did not provide any visual presentation of this emergency information through at least 6:54 p.m., over ten hours after the aural presentation.

(c) At 9:50 a.m. and 9:51 a.m., a representative of the American Lung Association advised viewers at home to protect themselves against air pollution caused by the fires by running their air conditioner, filtering the air, avoiding painting, shutting the windows and drinking plenty of fluids. Midwest did not provide any visual presentation of this emergency information through at least 6:54 p.m., over nine hours after the aural presentation.

III. DISCUSSION

6. Section 713 of the Act requires the Commission to prescribe rules on Video Programming Accessibility.¹² Pursuant to section 713, and out of a concern that the same critical emergency information be available to every television viewer, including persons with hearing disabilities, the Commission adopted section 79.2 of the rules.¹³ Section 79.2(b)(1)(i) requires that video programming distributors providing emergency information in the audio portion of programming “must” provide persons with hearing disabilities with the same access to such information that distributors provide to listeners, either through a method of closed captioning or by using another method of visual presentation.¹⁴ Section 79.2 does not require closed captioning,¹⁵ but does allow for other methods of visual presentation, including, but not limited to, open captioning, crawls, or scrolls.¹⁶ In addition, other methods of visual presentation could include maps, signs, and charts, each of which can communicate emergency information to those with hearing disabilities. 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.¹⁷ 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.”¹⁸ 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.”¹⁹ Further, it is clear from the Commission’s

¹²47 U.S.C § 613.

¹³*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*”).

¹⁴47 C.F.R. § 79.2(b)(1)(i).

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

¹⁶*Id.* at 6618, para. 8.

¹⁷*Id.* at 6621, para. 11.

¹⁸*Id.* at 6623-24, para. 16.

¹⁹*Id.* 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 needlessly to 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*

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definition of emergency information, *i.e.*, information about a “current” emergency that provides critical details concerning “how to respond to the emergency,”²⁰ that the Commission required video programming distributors to display emergency information in a timely manner so that viewers can respond to a current emergency before becoming endangered. Thus, although the Commission declined to require video programming distributors to close caption emergency information they provide aurally, the Commission did require video programming distributors to visually present by some method in real-time the emergency information they provide aurally.

7. Further, the Commission defined emergency information 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,”²¹ not merely the existence of an emergency.²² 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.”²³ 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.”²⁴ The Commission has several times reminded video programmers of their obligation to make emergency information accessible.²⁵

8. As an initial matter, we find that Midwest is a “video programming distributor” 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...”²⁶ As a broadcast licensee, Midwest must comply with the Commission’s rules regarding the accessibility of emergency information to individuals with hearing disabilities.

9. We now turn to an analysis of the information broadcast by Midwest over KFMB-TV during the time period at issue. We note at the outset that the October 26 and October 27 wildfires caused loss of

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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. See Note to 47 C.F.R. § 79.2(a)(2) discussed *infra* para. 7.

²⁰ 47 C.F.R. § 79.2(a)(2).

²¹ *Id.*

²² *Second Report and Order*, 15 FCC Rcd at 6617, para. 5.

²³ *Id.* (emphasis added).

²⁴ Note to 47 C.F.R. § 79.2(a)(2) (emphasis added).

²⁵ See, e.g., 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 Obligation to Make Emergency Information Accessible to Persons with Hearing or Vision Disabilities,” 19 FCC Rcd 9882 (May 24, 2004).

²⁶ 47 C.F.R. § 79.1(a)(2).

life, injuries, and extensive damage to property and natural resources in the City of San Diego, San Diego County, and other areas of Southern California.²⁷ The fires spread rapidly via high winds causing city and county officials to emphasize repeatedly that residents should evacuate immediately when they were told to do so and that they should pay attention to the information provided by television stations.²⁸ Police gave evacuation orders in certain areas over bullhorns; it was therefore especially important for persons with hearing disabilities, who might not be able to hear the bullhorns, to have timely warnings to evacuate provided visually on television. Midwest's own coverage of the fires illustrates the urgency and danger of the situation. Midwest interrupted regular programming with full coverage of the wildfires. Midwest anchors and reporters repeated emergency information many times, emphasizing the number of persons injured, acres burned, and houses destroyed. Midwest personnel characterized the fires as "huge," a "wall of flames" and "the biggest fire I've ever seen."²⁹ While Midwest visually presented some information during this period, it appears that in numerous instances Midwest did not make critical information available to persons with hearing disabilities.

10. The record shows that, in 11 separate instances from 7:29 a.m. on October 26 to 6:10 p.m. on October 27, Midwest aurally provided critical emergency information on road closures and the way to take shelter in one's home, but provided visual presentation of this information, if at all, only after a substantial delay of at least 30 minutes. The examples provided above at Paragraph 5 are illustrative. The information in question concerning road closures and the way to take shelter in one's home falls squarely within the Commission's definition of "emergency information" because it is "[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."³⁰ Indeed, the Commission offered these categories of information as examples of critical details covered by the rule.³¹ In addition, the Commission offered widespread fires as an example of an emergency covered by the Commission's rules.³²

11. As set forth above, video programming distributors are obligated to provide viewers with hearing disabilities with the "same accessibility" to emergency information as they provide to other viewers. Here, it is apparent that in numerous instances Midwest delayed the visual presentation of emergency information, thereby failing to provide persons with hearing disabilities the same access to emergency information that it provided to other viewers and apparently violating section 79.2 of our rules. We recognize that real-time closed captioning is not always available to broadcasters, and that creating visual information, in certain circumstances, may take some very short period of time. We emphasize, however, that any visual presentation of emergency information must be simultaneous or nearly simultaneous to the aural emergency information to provide the "same accessibility" to emergency information to persons with hearing disabilities. Nonetheless, as a matter of convenience in order to preserve our resources, we have exercised our discretion here to propose a forfeiture for only those situations in which Midwest provided closed captioning or other visual presentation of emergency information, if at all, after a substantial delay of greater than 30 minutes after Midwest provided the same information aurally (*i.e.*, those listed in the

²⁷See, e.g., KFMB-TV Videotapes; Gregory Alan Gross, *Fire Fight, No End in Sight for Besieged County, Wildfire Devastation Worst in Three Decades*, S.D. UNION-TRIBUNE, Oct. 27, 2003, at A1.

²⁸ KFMB-TV Videotapes.

²⁹*Id.*

³⁰47 C.F.R. § 79.2(a)(2). In addition, the information here was primarily intended for the audience in the geographic area where the emergency was occurring. 47 C.F.R. § 79.2(b)(1)(i).

³¹*Id.*

³²*Id.*

text and in Appendix A). It is clear from these examples that Midwest's apparent violations left persons with hearing disabilities without the same critical information the station gave to its listening audience. We note that our conclusions here are based on the specific facts and circumstances presented. We might reach different determinations regarding which apparent violations to include in an NAL based on a different record. For example, we might find it more appropriate in other circumstances and based on different facts to propose a forfeiture for those apparent violations where a video programming distributor provides visual presentation of emergency information in less than 30 minutes after it has provided aural information.

12. In response to the Bureau's Letter of Inquiry, Midwest argues that the details to be made to be made accessible to the hearing impaired was explicitly left to the licensee's good faith judgment by the *Second Report and Order*.³³ Midwest appears 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"³⁴ gives it unchecked latitude to determine where and when emergency information should be presented visually. We disagree. The language of section 79.2(b)(1)(i) is unequivocal: "[e]mergency information that is provided in the audio portion of the programming must be made accessible...."³⁵ While the order allows video programming distributors to exercise their good faith judgment in determining which "particular details" to broadcast, nothing in the order suggests that video programming distributors may rely on this limited exception to excuse a complete failure to visually present in a timely fashion categories of critical information that are clearly covered by the rule. It is not even remotely plausible to suggest that programmers may refuse to present such basic, critical information in a wildfire emergency as road closures and shelter-at-home advice. Such an expansive interpretation of the good faith exception would swallow the rule and render it wholly ineffective.

13. We conclude, therefore, that Midwest gave aural emergency information on KFMB-TV 11 separate times on October 26 and October 27, 2003, but apparently did not provide the same access to the information to persons with hearing disabilities by using a method of closed captioning or a method of visual presentation. Thus, Midwest apparently violated section 79.2(b)(1)(i) of the Commission's rules.

IV. FORFEITURE AMOUNT

14. 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.³⁶ In exercising such authority, we are

³³Response at 2, 9, 12, Exhibit 2.

³⁴*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.

³⁵47 C.F.R. § 79.2(b)(1)(i) (emphasis added).

³⁶Specifically, 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*

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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."³⁷ Based on our review of the record, we conclude that Midwest is apparently liable for the willful or repeated violation of our rules.

15. 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. We find that \$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).³⁸ 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. Midwest provided aural emergency information without providing visual presentation on numerous occasions, resulting in 11 apparent violations of the rule for which we propose a forfeiture. While we believe that a \$8,000 base forfeiture amount for violations of section 79.2(b)(1)(i) is appropriate generally, a strict application to all 11 apparent violations here would result in a total proposed forfeiture that is excessive in light of the circumstances presented. We therefore propose a forfeiture of \$20,000. Midwest 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.³⁹

V. CONCLUSIONS AND ORDERING CLAUSES

16. We have determined that Midwest Television, Inc. has 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 it provided to hearing persons accessible to persons with hearing disabilities, resulting in a proposed forfeiture of \$20,000.

17. 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 Midwest Television, Inc. IS HEREBY NOTIFIED of an Apparent Liability for Forfeiture in the amount of \$20,000 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 and contained in Appendix A.

18. 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, Midwest Television, Inc. SHALL PAY the

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Maxima to Reflect Inflation, 2004 WL 1366972, FCC 04-139 (rel. June 18, 2004); 69 FR 47788 (establishing an effective date of September 7, 2004).

³⁷See 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).

³⁸See 47 C.F.R. § 1.80(b)(4).

³⁹See 47 U.S.C. § 503(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

full amount of the proposed forfeiture OR SHALL FILE a response showing why the proposed forfeiture should not be imposed or should be reduced.⁴⁰

19. 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.

20. 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.

21. 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., 20554.⁴¹

22. IT IS FURTHER ORDERED that copies of this Notice of Apparent Liability for Forfeiture SHALL BE SENT by certified mail to E.D. Trimble, Vice President, Midwest Television and President and Chief Operating Officer, KFMB Stations, 7677 Engineer Road, San Diego, CA 92111.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

⁴⁰If Midwest 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 Peter Wolfe, Senior Attorney, Telecommunications Consumers Division, at peter.wolfe@fcc.gov.

⁴¹ 7 C.F.R. § 1.1914.

APPENDIX A

- (1) Between 7:29 a.m. and 7:41 a.m.,⁴² a representative of the California Department of Forestry (“CDF”) reported that Wildcat Canyon Road was closed and a representative of the San Diego County Sheriff’s Department reported that route 67, Scripps Poway Parkway, San Vicente Road and Wildcat Canyon Road were closed. The recorded footage that Midwest provided of its broadcast does not show any visual presentation of this emergency information through at least 6:54 p.m.⁴³
- (2) Between 8:38 a.m. and 8:44 a.m., the CDF representative again reported that Wildcat Canyon Road and Route 67 were closed. Midwest did not provide visual presentation of this emergency information through at least 6:54 p.m.
- (3) At 9:50 a.m. and 9:51 a.m., a representative of the American Lung Association advised viewers at home to protect themselves against air pollution caused by the fires by running their air conditioner, filtering the air, avoiding painting, shutting the windows and drinking plenty of fluids. Midwest did not provide visual presentation of this emergency information through at least 6:54 p.m.
- (4) Between 12:08 p.m. and 12:11 p.m., the American Lung Association representative advised viewers at home to avoid exercise and painting, and, if having breathing difficulties, to run their air conditioner through the filter and breathe through a damp cloth and through their noses. Midwest did not provide visual presentation of this emergency information through at least 6:54 p.m.
- (5) Between 12:33 p.m. and 12:42 p.m., Jeff Goldberg, a retired police officer, reported that Routes I-15, 805, and 163 were closed. Midwest did not provide visual presentation of this emergency information through at least 6:54 p.m.
- (6) Between 1:12 p.m. and 1:16 p.m., a representative of the California Highway Patrol reported that Routes I-8 and 805, and Otay Lakes Road were closed. Midwest did not provide closed captioning or other visual presentation of any portion of this emergency information until 2:30 p.m. to 2:32 p.m., when it provided visual presentation of some of the emergency information. Midwest did not provide visual presentation of the remainder of this emergency information through at least 6:54 p.m.
- (7) Between 1:32 p.m. and 1:44 p.m., the San Diego County Health Commissioner advised viewers at home to close their windows and doors, drink fluids, run their air conditioner, wash out their eyes with water, and call their doctor if they have health problems. Midwest did not provide visual presentation of this emergency information through at least 6:54 p.m.

⁴²Examples 1-10 occurred on October 26, 2003.

⁴³See n.11.

- (8) Between 2:02 p.m. and 2:07 p.m., the anchor advised viewers at home to keep their windows closed and their air conditioning on. Midwest did not provide visual presentation of this emergency information through at least 6:54 p.m.
- (9) Between 3:25 p.m. and 3:27 p.m., reporter Carlo Caccetti said that Route I-8 was closed. Midwest did not provide visual presentation of this emergency information through at least 6:54 p.m.
- (10) Between 4:13 p.m. and 4:29 p.m., the anchor advised viewers at home to stay inside, close their doors and windows, put on their air conditioning, breathe through a damp cloth, and breathe through their noses. Midwest did not provide visual presentation of this emergency information through at least 6:54 p.m.
- (11) Between 6:08 p.m. and 6:09 p.m. on October 27, 2003, reporter Deb Henke said that Routes 78-79 and 67 and San Vicente Road were closed. Midwest did not provide visual presentation of this emergency information through at least 6:54 p.m.