

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

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

ORDER

Adopted: March 7, 2007

Released: March 7, 2007

By the Chief, Enforcement Bureau:

In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau and Midwest Television ("Midwest"). The Consent Decree terminates an investigation initiated by the Enforcement Bureau regarding whether Midwest violated section 713 of the Communications Act of 1934, as amended (the "Act"),¹ and section 79.2(b)(1)(i) of the Commission's rules² by failing to make accessible to persons with hearing disabilities emergency information that it provided aurally in its programming for KFMB-TV during wildfire news coverage during October of 2003.

The Enforcement Bureau and Midwest have negotiated the terms of a Consent Decree that resolve this matter and terminate the investigation. A copy of the Consent Decree is attached hereto and incorporated by reference.

After reviewing the terms of the Consent Decree, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Midwest possess the basic qualifications, including character qualifications, to remain a Commission licensee. Furthermore, we find that the Notice of Apparent Liability³ issued in this proceeding is null and void.

Accordingly, **IT IS ORDERED**, pursuant to Section 4(i) of the Communications Act of 1934, as amended,⁴ and the authority delegated by sections 0.111 and 0.311 of the Commission's rules,⁵ that the attached Consent Decree **IS ADOPTED** and the Notice of Apparent Liability **IS CANCELLED**.

IT IS FURTHER ORDERED that the above-captioned investigation into the matters described

¹ 47 U.S.C. § 613.

² 47 C.F.R. § 79.2(b)(1)(i).

³ Midwest Television, Inc., Notice of Apparent Liability, 20 FCC Rcd 3959.

⁴ 47 U.S.C § 154(i).

⁵ 47 C.F.R. §§ 0.111, 0.311.

herein is terminated.

6. **IT IS FURTHER ORDERED** that copies of this order shall be sent by regular first class mail and certified mail - return receipt requested to Jonathan Blake, Covington & Burling LLP, 1201 Pennsylvania Avenue, NW, Washington, DC 20004.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

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CONSENT DECREE

I. INTRODUCTION

1. The Enforcement Bureau ("Bureau") of the Federal Communications Commission (the "FCC" or "Commission") and Midwest Television, Inc. ("Midwest" or "Station"), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation (the "Investigation") regarding whether the Station complied with section 713 of the Communications Act of 1934, as amended (the "Act"),¹ and section 79.2(b)(1)(i) of the Commission's rules,² as it relates to the duty to make accessible to persons with hearing disabilities emergency information that the Station provided aurally in their programming during wildfire news coverage on October 26 and October 27, 2003.

II. BACKGROUND

2. During the week beginning Sunday, October 26, 2003, there were wildfires throughout Southern California, including the San Diego area. Due to high winds these fires spread rapidly and caused the evacuation of many San Diego residents. During this time, the Station broadcast emergency information regarding the wildfires. The Commission was made aware of allegations that the Station may have failed to make certain information regarding the wildfires accessible to persons with hearing disabilities. This failure allegedly resulted in hearing impaired viewers not having access to critical emergency information. The Bureau subsequently launched an investigation into the Station's October 26 and 27 broadcasts, which determined that the Station failed to provide visual presentation of emergency information about the wildfires in 11 instances where the information had been aurally presented.³ Accordingly, the Bureau issued a Notice of Apparent Liability for Forfeiture ("NAL") proposing that Midwest pay a forfeiture of twenty thousand dollars (\$20,000) for apparently failing in a timely manner to make accessible to persons with hearing disabilities emergency information that it provided aurally.

¹ 47 U.S.C. § 613.

² 47 C.F.R. § 79.2(b)(1)(i).

³ The 11 apparent violations cited in the NAL were described in an attachment to the NAL and will be referred to throughout this forfeiture order. See Attachment A.

Midwest filed a response to the NAL on March 24, 2003.⁴

III. DEFINITIONS

3. For the Purposes of this Consent Decree, the following definitions shall apply:
- (a) “Act” means the Communications Act of 1934, as amended;
 - (b) “Bureau” means the Enforcement Bureau of the Federal Communications Commission;
 - (c) “Commission” or “FCC” means the Federal Communications Commission;
 - (d) “Emergency Visual Presentation Policy” means the process and procedures developed by the Station in an effort to ensure compliance with the Act and the Rules regarding broadcasting emergency information for the hearing impaired;
 - (e) “Extended news coverage of an emergency condition” means news programming of one half hour or greater duration, other than the Station’s regularly scheduled news programming, during which emergency information, as defined in section 79.2 of the Commission’s rules, is provided;
 - (f) “Effective Date” means the date on which the Bureau releases the Adopting Order;
 - (g) “Investigation” means the investigation of the Station’s broadcasts on October 26 and 27, 2003;
 - (h) “Midwest” means Midwest Television, Inc., licensee of KFMB-TV, San Diego, CA, and any affiliate, d/b/a predecessor-in-interest, parent companies and any direct or indirect subsidiaries of such parent companies, or other affiliated companies or businesses, and their successors and assigns;
 - (i) “Order” or “Adopting Order” means an Order of the Bureau adopting the terms and conditions of this Consent Decree without change, addition, or modification, and formally terminating the above-captioned Investigation;
 - (j) “Parties” means Midwest and the Bureau;
 - (k) “Rules” means the Commission’s regulations set forth in Title 47 of the Code of Federal Regulations; and,
 - (l) “Station” means Midwest’s station KFMB-TV, Facility ID. No. 42122, serving the San Diego, CA, Designated Market Area.

⁴ Letter to David Solomon, Chief, Enforcement Bureau, Federal Communications Commission from Elizabeth M. Kimmel, Vice President, Vice President, Business & Legal Affairs, Midwest Television, Inc.

IV. AGREEMENT

4. Midwest agrees that the Bureau has jurisdiction over it and the subject matter contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

5. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between them concerning the Investigation. In express reliance on the covenants and representations contained herein, and to avoid the potential expenditure of additional public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of this Investigation and in accordance with the terms of this Consent Decree, the Station agrees to the terms, conditions and procedures contained herein.

6. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding regarding any compliance or noncompliance by Midwest with the requirements of the Act and the Rules. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Midwest does not admit or deny any non-compliance or violation of the Act or the Commission rules in connection with the matters that are the subject of this Consent Decree.

7. The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in an Order.

8. The Parties agree that this Consent Decree shall become effective on the Effective Date and shall have the same force and effect as any other order of the Commission. Any violation of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

9. The Bureau agrees that it shall terminate the Investigation. The Bureau agrees that, in the absence of new material evidence, it will not on its own motion initiate any inquiries, investigations, forfeiture proceedings, hearings, or other sanctions or actions against Midwest, based in whole or in part on the Investigation or any complaints alleging violations of section 79.2 relating to the Station's coverage of the San Diego wildfires during October of 2003. The Bureau agrees that, in absence of material new evidence, it will not initiate or recommend to the Commission any new proceeding, informal or formal, regarding the matters that were subject of the Investigation. The Bureau further agrees that, in absence of material new evidence, it will not use the facts developed in this Investigation prior to the Effective date to initiate on its own motion, or recommend to the Commission, any proceeding, informal or formal, or take any action on its own motion against Midwest with respect to its basic qualifications to be or remain a Commission licensee.

10. In consideration for the termination of the Investigation, the Station will implement within 30 days of the Effective Date and maintain the following Emergency Visual Presentation Policy, which will be overseen by the Station's News Director:

- (a) It shall be the policy of the Station to closed caption the regularly scheduled local news and emergency information set forth below. Pursuant to this policy, the Station will contract with a reputable real-time closed captioning service provider to obtain real-time closed captioning for said regularly scheduled newscasts and emergency information presented on KFMB-TV.

(1) Monday-Friday News Broadcast at 5:00-6:00 p.m., 11:00-11:30 p.m., and,

(2) Any "extended news coverage of an emergency condition" affecting the San Diego, CA Designated Market Area.

- (b) It shall be the policy of the Station to closed caption all emergency information broadcast outside a regularly scheduled newscast if such information is conveyed aurally by the Station. However, pursuant to the Emergency Visual Presentation Policy, if captioning services are not immediately available or if captioning services cannot be immediately secured, the Station will make critical details of the emergency information accessible by other visual means, such as crawls, scrolls, or handwriting on a blackboard, and will continue to do so until captioning begins. In any event, captioning must be provided as set forth above, within thirty (30) minutes of any "extended news coverage of an emergency condition," consistent with the Commission's rules and policies. Emergency information will include any information relating to an imminent or ongoing emergency, as described in section 79.2 of the Commission's rules, affecting the Station's viewers that is intended to protect life, health, or property.
- (c) The Station will maintain visible postings on television sets in the Station's newsroom and master control that remind employees to contact the Station's captioning service during emergency conditions and include the phone number for that service;
- (d) The Station will maintain a labeled speed-dial button on telephones in the Station's newsroom and master control to the Station's captioning service;
- (e) Pursuant to the Emergency Visual Presentation Policy, the Station will promptly commence captioning, or contact its captioning service, before or contemporaneously with any broadcast coverage of a pending or imminent emergency that endangers the Station's viewers and will make its best reasonable efforts to ensure that coverage of the emergency is captioned as soon as possible. As set forth above, captioning must be provided within the first thirty (30) minutes of any "extended news coverage of an emergency condition," consistent with the Commission's rules and policies. Consistent with 79.2 of the Commission's rules, during any time that captioning is not immediately available to caption the news cast or breaking news report, the Station will make the critical details of the emergency information accessible by other means, such as crawls, scrolls, or handwriting on a blackboard.
- (f) The Station will distribute, at least every six months, the Station's emergency visual presentation policy to news and other appropriate employees as well as when such employees are hired.

11. In consideration for the termination of the Investigation, and in accordance with the terms of this Consent Decree, Midwest will make a voluntary contribution to the United States Treasury without further protest or recourse to a trial de novo in the amount of eighteen thousand dollars (\$18,000) within 30 calendar days after the Effective Date. Midwest must make this payment by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Acct. No. and FRN referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 358340 Pittsburgh, Pennsylvania, 15251. Payment by overnight mail may be sent to Mellon Client Service, 500 Ross Street, Room 670, Pittsburgh, PA, 15262-0001, Attention: FCC Module Supervisor. Payment by wire transfer may be made to ABA Number 043000261, receiving Mellon Bank, and account number 911-6229. Please include your NAL/Acct No. in your transfer.

12. Midwest's decision to enter into this Consent Decree is expressly contingent upon the Bureau's issuance of an Order that is consistent with this Consent Decree, and which adopts the Consent Decree without change, addition or modification.

13. Midwest waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order, provided the Bureau issues an Order adopting the Consent Decree without change, addition or modification.

14. If any Party (or the United States on behalf of the FCC) brings a judicial action to enforce the terms of the Order, neither Midwest nor the FCC shall contest the continuing validity of the Consent Decree or Order. Midwest and the Commission further agree that they will waive any statutory right to a trial de novo with respect to any matter upon which the Order is based (provided in each case that the Order is limited to adopting the Consent Decree without change, addition, or modification), and that they will consent to a judgment incorporating the terms of this Consent Decree.

15. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, this Consent Decree shall become null and void and may not be used in any manner in any legal proceeding.

16. The Parties agree that if any provision of this Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Midwest does not consent), that the provision will be superseded by such Commission rule or order.

17. By this Consent Decree, Midwest does not waive or alter its right to assert and seek protection from disclosure of any privileged or otherwise confidential and protected documents and information, or to seek appropriate safeguards of confidentiality for any competitively sensitive or proprietary information.

18. The Parties agree that the requirements of this Consent Decree shall expire twenty-four (24) months from the Effective Date.

19. This Consent Decree may be signed in counterparts and/or by telecopy and, when so executed, the counterparts, taken together, will constitute a legally binding and enforceable instrument whether executed by telecopy or by original signatures.

For the Enforcement Bureau

For Midwest Television, Inc.

By: _____
Kris Anne Monteith

By: _____
Elisabeth M. Kimmel

Date

Date