

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

In the Matter of)
)
WTXL-TV License LLC)
Licensee of Television Station WTXL-TV,) CG Docket No. 05-231
Tallahassee, Florida)
)
Petition for Waiver)
)
)

ORDER

Adopted: December 31, 2014

Released: December 31, 2014

By the Deputy Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. In this Order, the Consumer and Governmental Affairs Bureau (CGB or Bureau) grants WTXL-TV License LLC (WTXL), Licensee of Television Station WTXL-TV, Tallahassee, Florida a limited 30 day waiver of the June 30, 2014 effective date of the Commission's enhanced electronic newsroom technique (ENT) requirements that were adopted in the February 2014 Closed Captioning Quality Order. The waiver is granted retroactive back to June 30, 2014, with a termination date of July 30, 2014.

II. BACKGROUND

2. In 1997, the Commission adopted closed captioning rules to make television programming accessible to people who are deaf or hard of hearing. Unless they qualify for an exemption, all video programming distributors, including all television broadcast stations, must provide

1 Notice of Effective Dates of Closed Captioning Quality Report and Order and Declaratory Ruling, and Announcement of Comment and Reply Comment Deadlines for Related Further Notice of Proposed Rulemaking, CG Docket No. 05-231, Public Notice, 29 FCC Rcd 3656 (CGB 2014).

2 See 47 C.F.R. § 79.1(e)(11).

3 Closed Captioning of Video Programming, Telecommunications for the Deaf and Hard of Hearing, Inc., Petition for Rulemaking, CG Docket No. 05-231, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 2221, 2271-72, ¶¶ 80-81 (2014) (Closed Captioning Quality Order) (adopting and setting the effective date for the enhanced ENT rules).

4 On June 27, 2014, WTXL filed a Petition for Limited Waiver and Request for Extension (Petition) seeking a thirty day extension of the June 30, 2014 effective date. The Bureau grants WTXL's petition retroactively so that it is not deemed noncompliant with our rules for the month of July, 2014.

5 See Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, MM Docket No. 95-176, Report and Order, 13 FCC Rcd 3272 (1997) (1997 Closed Captioning Report and Order), recon. granted in part, Order on Reconsideration, 13 FCC Rcd 19973 (1998) (Closed Captioning Reconsideration Order); 47 C.F.R. § 79.1.

closed captioning for all non-exempt video programming.⁶ This includes television newscasts and other live programming.⁷ However, television stations that are not in the top 25 television markets⁸ or are not affiliates of the four major national broadcast networks in any market may elect to use ENT in place of closed captioning for newscasts and live programming to achieve compliance with the captioning rules.⁹ ENT is a “technique that can convert dialogue included on a [television reporter or anchor’s] teleprompter script into captions.”¹⁰

3. In the 2014 *Closed Captioning Quality Order*, the Commission set forth the following new procedures for stations permitted to use ENT.¹¹ These enhanced procedures are designed to increase the amount of information provided to people who are deaf or hard of hearing when ENT is used:

- (A) In-studio produced news, sports, weather, and entertainment programming will be scripted.
- (B) For weather interstitials where there may be multiple segments within a news program, weather information explaining the visual information on the screen and conveying forecast information will be scripted, although the scripts may not precisely track the words used on air.
- (C) Pre-produced programming will be scripted (to the extent technically feasible).
- (D) If live interviews or live on-the scene or breaking news segments are not scripted, stations will supplement them with crawls, textual information, or other means (to the extent technically feasible).
- (E) The station will provide training to all news staff on scripting for improving ENT.
- (F) The station will appoint an “ENT Coordinator” accountable for compliance.¹²

The Commission added that “to the extent that it is not technically feasible for a particular station to comply with our new requirements by” June 30, 2014, a station may request a limited waiver of the effective date upon a good cause showing.¹³

4. On June 27, 2014, WTXL filed a Petition for Limited Waiver and Request for Extension (Petition) seeking a thirty day extension of the June 30, 2014 effective date. In support of its Petition, WTXL explained that it was unable to give its news staff ENT training by the deadline because many of its employees had departed from the station during the preceding quarter. As a result, WTXL stated that it needed one additional month to hire and give ENT training to new staff.

III. DISCUSSION

5. Generally, the Commission’s rules may be waived for good cause shown.¹⁴ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance

⁶ See 47 C.F.R. § 79.1(b).

⁷ *Closed Captioning Quality Order*, 22 FCC Rcd at 2266-67, ¶ 71.

⁸ These are defined by Nielsen’s Designated Market Areas. See 47 C.F.R. § 79.1(e)(3).

⁹ 47 C.F.R. § 79.1(e)(3).

¹⁰ *Closed Captioning Quality Order*, 29 FCC Rcd at 2266-67, ¶ 71.

¹¹ *Id.* at 2271-72, ¶ 81.

¹² 47 C.F.R. § 79.1(e)(11).

¹³ *Closed Captioning Quality Order*, 29 FCC Rcd at 2271, ¶ 80 (citing 47 C.F.R. § 1.3; *Wait Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*) (“The agency’s discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances.”) (citations omitted)).

¹⁴ 47 C.F.R. § 1.3.

inconsistent with the public interest.¹⁵ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁶ Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule and if such a deviation will serve the public interest.¹⁷ Moreover, in demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.¹⁸ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.¹⁹

6. We find that WTXL has shown good cause for a waiver. We find that the loss of many of its news staff so close to the deadline constitutes the special circumstances that warrant a deviation from the general rule. WTXL has demonstrated that strict application of the rule in this case would be inequitable and result in hardship because WTXL explained that it was not technically feasible for it to recruit, hire, and give ENT training to newly hired employees for WTXL to allow it to come into compliance by the June 30, 2014, deadline. In addition, by requesting only a brief, 30-day extension of the deadline to come into compliance, WTXL demonstrated that it was earnestly seeking to fulfill the overall objective of the new ENT requirements, *i.e.*, to provide enhancements to its newscasts that would increase the amount of information made available to people who are deaf or hard of hearing. We therefore conclude that it is appropriate to grant WTXL a waiver of the enhanced ENT requirements adopted in the *Closed Captioning Quality Order* for a period of one month, *nunc pro tunc*, from June 30, 2014 to July 30, 2014.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 4(i) and (j), 5, 303(r) and 713 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), 155, 303(r) and 613, and sections 0.141, 0.361, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, and 1.3, that the Petition filed by WTXL-TV License LLC (WRXL), Licensee of Television Station WTXL-TV, Tallahassee, Florida, is GRANTED effective June 30, 2014, *nunc pro tunc*, and that its deadline for complying with new 47 C.F.R. § 79.1(e)(11) is extended through July 30, 2014.

8. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

FEDERAL COMMUNICATIONS COMMISSION

Karen Peltz Strauss
Deputy Chief
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¹⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁶ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

¹⁷ *Northeast Cellular*, 897 F.2d at 1166.

¹⁸ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

¹⁹ *WAIT Radio*, 418 F.2d at 1157 (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broadcasting Corp.*, Memorandum Opinion and Order, 18 FCC Rcd 1414, 1415-16, ¶ 6 (2003).