

Mr. McClland contends in his complaint that on October 24, 2005, at approximately 1:15 a.m., the closed captioning provided for the entertainment program (“*HomeTeam*”) airing at that time partially obstructed emergency information provided via a station “crawl” during WESH’s reports relating to Hurricane Wilma and associated storm activity. Additionally, Mr. McClland contends that at approximately 7:40 a.m., WESH provided “no captioning or other method of visual presentation of critical details” during WESH’s further reports relating to Hurricane Wilma and associated tornado activity.

Based on Mr. McClland’s complaint, WESH undertook a review of the programming aired around the time Mr. McClland allegedly viewed WESH on October 24, 2005. WESH is sensitive to the needs of its viewers, particularly those who are hearing impaired such as Mr. McClland, and WESH appreciates this opportunity to clarify what occurred on October 24, 2005.

First, with respect to the programming aired at 7:40 a.m., a review of WESH’s programming confirms that the station did, in fact, provide captioning during the Hurricane Wilma/tornado report. In fact, WESH’s regular closed captioning ran uninterrupted during the 7:40 a.m. report, which was part of the WESH morning newscast. Because WESH was using live captioning during the entirety of the morning newscast, any critical details that were provided aurally would have also appeared visually, via WESH’s closed captioning. It appears from Mr. McClland’s complaint that he was flipping through a number of channels during that time, and it may be the case that he confused WESH with another station during the 7:40 a.m. time frame.

Second, with respect to the programming aired during the early morning hours of October 24, 2005, a review of WESH’s programming reveals that WESH was not airing any weather reports or other emergency information aurally at 1:15 a.m. During the early morning hours, including between 1:15 a.m. and 1:45 a.m.,¹ WESH did provide certain weather-related information in the form of a “crawl” that ran intermittently for periods of several minutes. This crawl was sometimes provided along the bottom of the screen where it was largely visible below the *HomeTeam* closed captioning, and it was sometimes provided as part of a “squeezeback” which featured a map graphic on the left portion of the screen identifying the affected counties and the entertainment programming on the right.² The information in these crawls was provided on a county-by-county basis and included

¹ In an effort to fully evaluate its compliance, WESH expanded its review of programming to the period 1:15 a.m. to 1:45 a.m.

² During the squeezebacks, a larger portion of the crawl was intermittently blocked by the *HomeTeam* closed captioning, though the entire crawl was readable when viewers focused on the rightmost portion of the screen. The first of the squeezebacks began at approximately 1:33 a.m., or 18 minutes after the time referenced in Mr. McClland’s complaint. There is no indication in the complaint that Mr. McClland was watching or took issue with the period of WESH’s programming when the squeezeback was on air. WESH concedes that the placement of the crawl during the

notations regarding areas where tropical storm/inland hurricane/hurricane/tornado warnings and watches were in effect, school and government office closings for October 24, shelter information, pet shelter information, suspension of turnpike tolls, and emergency phone numbers.³ Significantly for purposes of Section 79.2 compliance as complained about by Mr. McClland, none of the information provided in the crawl was provided aurally at that time. Also provided intermittently during this 30-minute period was a graphic stating “Tornado Warning until 2:15 a.m.” and “Tornado Warning Orange until 2:15 a.m.”

HomeTeam is a program provided to WESH by a syndicator, and it comes pre-formatted with closed captioning. *HomeTeam*’s closed captioning is formatted to run at the bottom of the screen. As a result, unfortunately, the crawl that WESH ran during the early morning period identified by Mr. McClland was intermittently partially blocked by the *HomeTeam* closed captioning. However, the WESH severe weather crawl was legible, even with the *HomeTeam* captioning partially obscuring the uppermost portion of the crawl. Additionally, the crawl continued to run even when there was no *HomeTeam* captioning on the screen. As a result, viewers located in areas that were subject to WESH’s weather report would have had available to them, albeit imperfectly, any emergency information provided in the crawl. In the wake of this incident, WESH has reminded its operations personnel that captioning and weather alert information running in a crawl must not simultaneously air in the same portion of the screen.

In sum, notwithstanding the minimal overlap of the *HomeTeam* captioning above the uppermost portion of the crawl, all of the crawl’s information was visible at some time during the period in question. Thus, WESH was in compliance with Section 79.2 of the Commission’s rules.

WESH sympathizes with Mr. McClland’s apparent anxiety about the weather situation that was developing on October 24, 2005, and his apparent concern that he had a difficult time finding information that satisfied him.⁴ However, Mr. McClland was apparently not tuned into WESH

squeezeback periods may have made it somewhat challenging for viewers to continually read the crawl effortlessly. WESH has discussed the technical nuances of this matter internally and believes that it has instituted a policy that will make it unlikely to recur.

³ WESH’s early morning crawls included information relating to Lake County, where Leesburg—Mr. McClland city of residence—is located. The Lake County portion of the crawl ran at approximately 1:20:40 a.m. and was generally legible, though, again, the uppermost portion of the crawl was blocked intermittently by the *HomeTeam* closed captioning.

⁴ For example, Mr. McClland appears to have been concerned because “he didn’t know that hurricanes could spawn tornados sporadically in quick bursts in Florida, even far from the eye of the hurricane.” That scientific information, however, does not, by itself, constitute emergency information. In that regard, a portion of Mr. McClland’s complaint seems to be more about the availability of particular non-emergency factual information provided by various media outlets than

between 11 p.m and 1 a.m., which, according to the complaint, was the time frame in which Mr. McClland found what he thought was the most useful information on The Weather Channel. Based on Ms. Hamlin's November 23, 2005, email, which was included as part of the complaint, the time frame in which severe weather was predicted to impact Leesburg directly was from 11:45 p.m. - 12:45 a.m.—earlier than the time at which Mr. McClland very briefly tuned into WESH.

For the reasons described above, WESH's programming aired on October 24, 2005, concerning the Hurricane Wilma and associated storm activity complied substantially, if not perfectly, with the FCC's rules regarding the accessibility of such coverage to hearing impaired viewers. WESH regrets that there were intermittent periods where its crawl during the early morning hours relating to severe weather was partially overlapped by the closed captioning provided for the entertainment programming airing simultaneously.

WESH takes very seriously its obligation to make its programming accessible to individuals with hearing impairments and will continue to strive for full compliance with these rules. WESH has instituted a policy of flipping its closed captioning to the top of the screen whenever a crawl begins to run at the bottom of the screen. However, WESH notes that, even when WESH moves its captioning to the top of the screen, some older model television sets may place WESH's closed captioning at the bottom of the screen where it may overlap with the station's crawl, and, in that regard, WESH's compliance with the rules may be limited in some instances to the capabilities of a viewer's receiver. WESH notes that, to the extent that television sets are capable of displaying closed captioning in multiple locations on the screen, such technology is helpful to all stakeholders—and may be helpful to Mr. McClland specifically—in providing some flexibility to ensure that the needs of hearing impaired viewers are appropriately served and that compliance with the Commission's rules is achieved.

about the failure of WESH to visually present emergency information that it had provided aurally. Other passages in the complaint relating to other stations reinforce this notion—for example, the complaint notes that while Mr. McClland was watching another channel, “[h]e did not know if it was a tornado watch or warning, didn't know how close it was to home and had no information about what he should be doing to protect himself or his home.” While WESH makes no representations regarding the material aired on this other channel, WESH notes that Mr. McClland's complaint seems to be more about his lack of information generally than about a station's specific compliance with Rule 79.2; if this other station was not providing visual information about “what he should be doing to protect himself or his home” it could have been for myriad reasons, including that there may have been no threat at that time to homes in Leesburg or there may have been a journalistic judgment made not to provide such information in the first instance. With all due respect to Mr. McClland, there is no legal basis for the notion that one or more stations in the Orlando area may have been in violation of the emergency access rule on October 24, 2005, because they failed to provide at all certain information that may have assuaged Mr. McClland's particular anxieties.

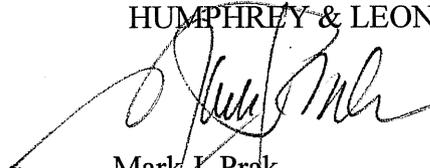
Martha E. Contee, Chief
January 24, 2006
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The signature of the Licensee's officer in the Certification of Licensee attached hereto indicates that he has read this letter and that to the best of his knowledge the information is true and correct.

Should you have any further questions regarding the above-referenced complaint, please do not hesitate to contact the undersigned.

Sincerely,

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.

A handwritten signature in black ink, appearing to read "Mark J. Prak", is written over the printed name and firm name.

Mark J. Prak
*Counsel to Orlando Hearst-Argyle
Television, Inc.*

Enclosure

cc: Jenifer Simpson (FCC, via e-mail)
Ms. Lise Hamlin
Mr. John McClland

WILLIAM P. BAUMAN
PRESIDENT
GENERAL MANAGER

CERTIFICATION OF LICENSEE

The signature of the Licensee's officer below indicates that he has read the foregoing letter and that to the best of his knowledge the information is true and correct.

Orlando Hearst-Argyle Television, Inc.

By:



William Bauman
President and General Manager

