

September 28, 2011

Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

FILED/ACCEPTED

SEP 28 2011

Federal Communications Commission
Office of the Secretary

Re: KFWD(TV), Fort Worth, Texas

Dear Ms. Dortch:

On behalf of HIC Broadcast, Inc. (“HIC”), licensee of the above-referenced television station (“KFWD” or the “Station”), we hereby submit, in triplicate and pursuant to 47 C.F.R. § 79.1(f), a request for a limited waiver of the Commission’s closed captioning requirements. As demonstrated herein, the brief waiver would avoid placing an undue burden on the Station. The factual representations asserted herein are supported by the attached Declaration of Mr. Tony Montes, who is the Station Manager of KFWD.

Background

The Program. “The Rockford Files” (the “Program”) is an hour-long dramatic series about a private detective which originally aired from between 1974 and 1980. Because the Program first was exhibited before the closed-captioning rules were adopted, it is considered “pre-rule” programming under the FCC’s rules.¹ The Station airs the Program five times a week on weekday evenings. The Program also airs daily on the MeTV broadcast network.²

The Rules. The FCC’s closed-captioning rules, adopted in 1997, established a transition period for captioning of pre-rule programming.³ Initially, broadcasters were required to provide captioning for 30% of pre-rule programming not otherwise exempt from the rules.⁴ Since January 1, 2008, captioning has been required for 75% of non-exempt pre-rule programs.⁵

¹ See 47 C.F.R. § 79.1(a)(6).

² See http://metvnetwork.com/metv_national.pdf.

³ 47 C.F.R. § 79.1(b)(2); see Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, *Report and Order*, 13 FCC Rcd 3272, 3295-3303 (1997) (“*Closed Captioning Report and Order*”), reconsideration granted in part, *Order on Reconsideration*, 13 FCC Rcd 19973 (1998).

⁴ 47 C.F.R. § 79.1(b)(2)(i).

⁵ 47 C.F.R. § 79.1(b)(2)(ii).

Section 713 of the Communications Act of 1934, as amended, requires the Commission to consider requests for waiver of its closed captioning rules based on the undue burden that the rules would impose on a provider of video programming or a program owner.⁶ The Commission's rules provide that, during the pendency of a waiver request, the programming that is the subject of the request is considered exempt from the closed captioning requirements.⁷

Limited Waiver Request

The Station recently revised its weekday lineup for the new television season and discovered that the Program was not available with closed captioning from its syndicator. Because the Program is not currently captioned, without a waiver, the Station has calculated that it would fall slightly below the 75% benchmark for pre-rule programming. Therefore, the Station respectfully requests a limited waiver of Section 79.1(b)(2)(ii) of the Commission's rules, covering only the third and fourth quarters of 2011, such that its lineup of pre-rule programming is considered in compliance during that period.

The Station has requested and received bids from two closed captioning providers, Caption Technologies, Inc., and U.S. Captioning Company, Inc., and is committed to providing captions for the Program as soon as possible and, in any event, no later than the first week of January, 2012. Nevertheless, the Station is unable to immediately implement this captioning for the Program, which, if present, would place the Station in compliance with the Commission's rules. If its waiver request is denied, the Station will be forced to reconfigure its lineup immediately, resulting in unnecessary viewer disruption.

As noted above, the Program also airs daily on MeTV, a nationwide broadcast network with dozens of affiliates in more than thirty-five states across the country. Nevertheless, none of these stations are required to provide captioning for the Program under the Commission's rules. MeTV is considered a "new" network and, as a result, will not be subject to the closed-captioning rules until the network has been in existence for four years.⁸ Even though the Program is being broadcast by television stations nationwide, many of which are owned by major broadcast groups, the Program's distributor has no incentive to provide captioning for the show at this time because the vast majority of the television stations airing the Program can claim an exemption. As a result, the burden of paying for captioning for the Program must be borne by the Station, a small independent station that cannot leverage the resources of a network or major station group.

The Station nevertheless understands and accepts its captioning obligations and is proud to bring accessible programming to all of its viewers. Accordingly, as soon as HIC discovered that captioning was necessary, it began investigating the cost and manner for it to arrange for captioning independently. The limited waiver requested herein will provide HIC with enough time to explore its options and secure closed captioning for the Program. In the meantime, the Station can continue to provide its classic television programming without disrupting its fall lineup.

⁶ 47 U.S.C. § 713(d)(3); *see* 47 C.F.R. § 79.1(f).

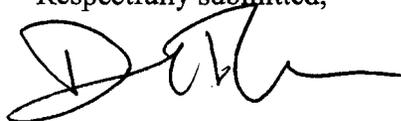
⁷ 47 C.F.R. § 79.1(f)(10).

⁸ 47 C.F.R. § 79.1(d)(9).

Conclusion

For the reasons discussed herein, the Station respectfully requests a brief, limited waiver of the Commission's closed captioning rules. If you need any further information concerning this request, please contact us directly.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Derek Teslik', with a long horizontal flourish extending to the right.

Derek Teslik
Counsel to HIC Broadcast, Inc.

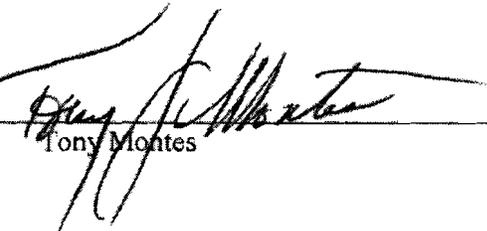
Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
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HIC Broadcast, Inc.)
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)
For Request for Waiver of)
Closed Captioning Requirements)

DECLARATION

I am Tony Montes and I hold the position of Station Manager of KFWD(TV). I have reviewed the foregoing request for a limited waiver of the closed captioning requirements and have found the factual matters set forth therein to be true to the best of my knowledge and belief. I declare under penalty of perjury that the foregoing is true and correct.

By: _____


Tony Montes

September 27, 2011