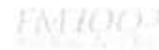


RECEIVED - FCC
NOV 30 2012
Federal Communications Commission
Bureau / Office



November 30, 2012

Via Hand Delivery and E-mail

Susan L. Kimmel
Deputy Chief, Disability Rights Office
Consumer & Governmental Affairs Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

STAMP AND RETURN

Re: Notice of Informal Complaint (NOIC),
FCC No. 12-C00428316-1,
KSL Broadcast Group (DeWaal)

Dear Ms. Kimmel:

Television broadcast station KSL-TV, Salt Lake City, Utah ("KSL"), hereby responds to the above-referenced Notice of Informal Complaint ("NOIC") dated October 31, 2012.¹ The NOIC concerns an informal complaint filed electronically with the Federal Communications Commission ("FCC" or "Commission") by Shawnelle DeWaal ("Complainant") on FCC Form 2000C in which the Complainant answered Question 1 for type of complaint as "Closed Captioning."

Based on the answers on the Complainant's Form 2000C, the complaint was not specific to KSL. Rather, the complaint appears to be generic with respect to three local broadcast stations affiliated with major networks: KSL Channel 5 (NBC), KUTV Channel 2 (CBS), and KTVX Channel 4 (ABC 4 News). The complaint specifies a specific breaking news cut-in that was aired on September 27, 2012 at 9:10 pm. As discussed below, KSL did not air a breaking news cut-in at or close to that time.

KSL wishes to emphasize at the outset that it takes great pride in its coverage of breaking news events and believes this to be an important service and duty to the community it serves. Although the station provides closed captioning of all scheduled programming, because Salt Lake City is below the top 25 markets KSL is among the entities permitted to use the electronic newsroom technique ("ENT") for determining compliance with the Commission's closed captioning requirements for live programming.² The electronic newsroom captioning technique

¹ The NOIC is attached as Exhibit 1.

² Section 79.1(e)(3) provides in pertinent part: "Live programming or repeats of programming originally transmitted live that are captioned using the so-called 'electronic newsroom technique' will be considered

uses computer software to create closed captions from the text in a station's news script computer. Only text transmitted from the scripting computers onto the teleprompter is captioned by this method. Thus, the electronic newsroom technique does not provide captions for unscripted material, such as breaking news, live reports from the field, and some weather and sports reports.³

The FCC also has recognized that there are likely to be instances where it may not be feasible for video programmers on short notice to secure captioning resources and immediately provide closed captioning.⁴ Section 79.1(e)(10) of the closed captioning rules provides that “[i]n evaluating whether a video programming provider has complied with the requirement that all new non-exempt video programming must include closed captioning, the Commission will consider a showing that any lack of captioning was de minimis and reasonable under the circumstances.”⁵ In this regard, the Commission has recognized that “there may be times when it will be difficult for a video programming provider to present 100% of its new nonexempt programming with captions,” including situations involving “the inability to obtain captioning resources on short notice.”⁶

Upon receipt of the informal complaint, KSL investigated and confirmed that it broadcast three segments during the evening of September 27, 2012 regarding an alleged bomb threat at a TRAX light rail station in Salt Lake City. The first of these segments was broadcast during the local 10 o'clock news (from 10:14 to 10:16 pm) and was closed captioned. Additionally, two segments were broadcast as breaking news interruptions of regularly scheduled network programming (the Tonight Show with Jay Leno): the first from 10:52 to 10:57 pm and the second from 11:11 to 11:19 pm. Closed captioning resources were not immediately available for the breaking news report aired from 10:52 to 10:57 pm, but closed captioning resources were obtained and commenced two and a half minutes into the breaking news cut-in that aired from 11:11 to 11:19 pm. No further breaking news cut-ins on the subject were aired.

captioned, except that effective January 1, 2000, and thereafter, the major national broadcast television networks (*i.e.*, ABC, CBS, Fox and NBC), affiliates of these networks in the top 25 markets as defined by Nielsen's Designated Market Areas (DMAs) and national nonbroadcast networks serving at least 50% of all home subscribing to multichannel video programming services shall not count electronic newsroom captioned programming towards compliance with these rules. . . .” *Id.* § 79.1(e)(3). KSL uses ENT for some of its local news programming.

³ See, e.g., Public Notice: Reminder to Video Programming Distributors of Obligation to Make Emergency Information Accessible to Persons With Hearing Disabilities, DA 01-1930, 16 FCC Rcd 15348, 13353.

⁴ See Public Notice: Clarification of Obligation of Video Programming Distributors to Make Emergency Information Accessible to Persons with Hearing Disabilities Using Closed Captioning, DA 06-1600, 21 FCC Rcd 9066, 9067 (2006).

⁵ See 47 C.F.R. § 79.1(e)(10).

⁶ *Closed Captioning and Video Description of Video Programming*, Order on Reconsideration, 13 FCC Rcd 19973, 19979, at para. 10 (Oct. 2, 1998).

Ms. Susan L. Kimmel
November 30, 2012
Page 3 of 3

The FCC has clarified that “*de minimis*” in terms of measuring compliance with the closed captioning rules can mean “insignificant . . . in terms of the amount of uncaptioned broadcast time.”⁷ The breaking news cut-in aired from 10:52 to 10:57 pm on September 27, 2012 would qualify as *de minimis* under Commission precedent.⁸ Although closed captioning was not available for this first, brief breaking news cut-in, KSL worked quickly to successfully obtain live closed captioning resources for most of the second breaking news segment on the incident, which aired starting just fourteen minutes later. In any event, the complaint cited a breaking news report aired at approximately 9:10 pm on September 27, 2012; and KSL did not air a cut-in at that time.

In sum, KSL respectfully submits that the informal complaint 12-C00428316-1 should be dismissed with respect to KSL. Nevertheless, and as noted above, KSL takes our viewers’ concerns very seriously and is committed to making news information accessible to viewers with hearing or visual impairments.

Please contact Michael Dowdle, Vice President/General Counsel, if you have any questions at (801) 575-5874 or mdowdle@ksl.com.

Sincerely,



Kent Nate
Vice President/CFO
KSL Broadcast Group
55 North 300 West
Salt Lake City, Utah 84180

cc: Shawnelle DeWaal, Complainant (via email)

⁷ See Public Notice: Obligation of Video Programming Distributors to Make Emergency Information Accessible to Persons with Hearing Disabilities Using Closed Captioning, DA 06-2627, 21 FCC Rcd 15084 (2006) at page 2.

⁸ See, e.g., *Midwest Television, Inc., Licensee of KFMB-TV, San Diego, California*, Consent Decree, DA 07-965, 22 FCC Rcd 4405 (2007) at ¶ 10(b) (“captioning must be provided . . . within thirty (30) minutes of any ‘extended news coverage of an emergency condition’”).

Exhibit 1

RECEIVED OCT 30 2012

Carrier Name : KSL Broadcast Group

Federal Communications Commission
Consumer & Governmental Affairs Bureau
Disability Rights Office
445 12th Street, S.W.
Washington, D.C. 20554

OFFICIAL
NOTICE OF INFORMAL COMPLAINT

October 31, 2012
(DEWAAL) (KSL Broadcast Group)
FCC Case No. 12-C00428316-1

Attached is a copy of an informal complaint naming your company that was recently filed with the Disability Rights Office (DRO) of the Federal Communications Commission. Pursuant to Section 713 of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 613, and Section 79.1 of the Commission's Rules, 47 C.F.R. § 79.1, we direct your company to respond to the complaint. **Your response is due within thirty (30) days of the date of this Notice.**

Your company, as the Multichannel Video Programming Distributor (MVPD), must respond specifically to each matter raised in the complaint and summarize the actions that it has taken to satisfy each such matter. If the programming at issue is reaching you without captions, in responding to the complaint, you have the responsibility to check with the supplying network or program producer before responding to determine that either the material is exempt from the captioning requirements pursuant to one of the categorical exemptions in 47 CFR §79.1(d) or pursuant to an individual petition for exemption filed under 47 CFR §79.1(f).

Please provide the complainant's name and the complaint number at the top of your response. A company that receives and responds to informal complaints electronically **must** submit its responses to the Commission via the FCC website using its DRO log-in. If your company does not receive and respond to informal complaints electronically via the FCC website, you must file a hard copy of your response with the Disability Rights Office of the Federal Communications Commission at 445 12th St., SW, Washington, D.C. 20554. Only if you are required to file a hard copy, please also send a courtesy electronic copy of the response to DROinquiries&complaints@fcc.gov which will expedite processing.

You are further directed to send a copy of your response to the complainant at the time that you forward the response to the Commission. To ensure that your response is received by the complainant in an accessible format, please send it pursuant to the preferred format or method of response indicated by the complainant on the complaint form. Finally, your company is directed to retain all records that are or may be pertinent to the allegations raised in each complaint until final Commission disposition of the complaint at issue.

A failure to answer any lawful Commission inquiry is considered a misdemeanor punishable by a fine under Section 409(m) of the Act, 47 U.S.C. § 409(m). Section 503(b)(1)(B) of the Act, 47 U.S.C. § 503(b)(1)(B), provides for the imposition by the Commission of forfeiture penalties against any person who willfully fails to follow the directives of the Act or of a Commission order.

If you have any questions regarding this Notice, please call the DRO inquiries and complaints assistance line at 202-418-7020 or write to DROinquiries&complaints@fcc.gov. To ensure that we can adequately respond to your inquiry, please provide the names of the complainant and your company, the complaint number, and the specific questions that you would like to have answered.

Sincerely,



Susan L. Kimmel, Deputy Chief
Disability Rights Office
Consumer and Governmental Affairs Bureau

CARRIER RESPONSE COVER PAGE

COMPLAINT # : 12-C00428316-1

CARRIER : KSL Broadcast Group

CONSUMER NAME : DEWAAL



Carrier Instructions: To better assist the FCC in ensuring that carrier responses are attached to the correct complaint, this cover page has been provided to you for responding to the complaint referenced above. Please ensure that this page precedes your response to this complaint. If you have any questions, please contact your FCC POC.

FCC Instructions: When scanning the carrier's response, select file type "Carrier Response" and upload file to the complaint # noted above.

Complaint Summary: 12-C00428316-1

Date Served : 10/31/2012

Response Due Date : 11/30/2012

Carrier : KSL Broadcast Group

Form Type : 2000C

Consumer Name : DEWAAL, SHAWNELLE

Complaint Submission Date: 09/28/2012

Complaint Type: Cable

Complaint Category: Disability

Complaint Sub-Category: Closed Captioning

User Complaint Key: 12-C00428316

Carrier: KSL Broadcast Group

Form 2000C – Disability Access Complaint

Consumer's Information:

First Name: **Shawnelle** Last Name: **DeWaal**

Company Name:

(Complete only if you are filing this complaint on behalf of a company or an organization.)

Post Office Box Number:

(Official Post Office box Number Only)

Address 1: **4125 North 3250 West #5B**
Mailing Address (where mail is delivered)

Address 2:

City: **Lehi** State: **UT** Zip Code: **84043**

Telephone Number (Residential or Business): **(801) 471 - 0658**

E-mail Address: **Sunshine57810@gmail.com**

Are you filing information on behalf of another party, such as client, parent, spouse or roommate?:

No

If yes, complete items a through h.

- a. Your relationship with the party:
- b. The party's first name:
- c. The party's last name:
- d. The party's daytime phone number:
- e. The party's street address or post office box number:
- f. City: State: Zip Code:
- g. E-mail address:
- h. Fax Number:

IMPORTANT: Please indicate the preferred format or method of response to the complaint by the Commission and defendant: **Letter** , , **Internet E-mail**

Form 2000C – Disability Access Complaint

*** ANSWER EACH QUESTION THAT APPLIES TO YOUR SPECIFIC COMPLAINT ***

1. Check the appropriate box for your type of complaint:

Closed Captioning

2. Provide the name, address and telephone number (if known) of the company(s) involved in your complaint:

Name: **KSL 5, 2 News, ABC 4 News**

City: **Salt Lake city** State: **UT** Zip Code:

Telephone number:

3. If your complaint is about accessibility of telecommunications services or equipment, provide the make and model number of the equipment or device that this complaint is about:

4. If your complaint is about closed captioning or emergency information on television, provide the date (mm/dd/yyyy) : **09/27/2012 09:10 PM**

and any details of when the event or action you are complaining about occurred:

Every Time when the Breaking News come up, there is NEVER have closed captions, We Deaf, Hard of hearing, and hearing loss people would love to have closed captions to know what is going on! Especially on Bomb threat news, weather news and more!! We all are not happy with NO CLOSED CPATIONS!!

5. If your complaint is about access to emergency information on television, provide the following information:

a. Television station call sign and network name (if applicable), or channel name (e.g., "WZUF, CBC," "WZUE-TV," "Sportingchannel West"):

b. Channel (e.g., "13"):

c. Station or subscription TV provider system location:

City: County:

State:

d. Date(s) and time(s) of emergency:

e. Detailed description of the emergency (i.e., flood, hurricane, tornado, etc., as well as the the areas in which the emergency occurred):

6. If your complaint is about video description or closed captioning on television, provide the following:

a. Television station call sign and network name (if applicable), or channel name (e.g., "WZUF, CBC," "WZUE-TV," "Sportingchannel West"):

KSL 5, ABC 4 News

b. Channel (e.g., "13"): **5, 4, 2**

c. Station or subscription TV provider system location:

City: **Salt Lake city** County: **Salt Lake**

State: **UT**

Form 2000C – Disability Access Complaint

*** ANSWER EACH QUESTION THAT APPLIES TO YOUR SPECIFIC COMPLAINT ***

- d. If you pay to receive television programming, type of subscription service (e.g., cable, Satellite): **cable**
- e. If you pay to receive television programming, name of the company to whom you subscribe: **Comcast**
- f. Name of program(s) involved:

7. Briefly describe your complaint and include the resolution you are seeking. If applicable, provide a full description of the telecommunications equipment or customer premises equipment (CPE) and/or the telecommunications service about which the complaint is made, and the date or dates on which the complainant either purchased, acquired or used, or attempted to purchase, acquire or use the telecommunications equipment, CPE or telecommunications service about which the complaint is being made: **Every Time when the Breaking News come up, there is NEVER have closed captions, We Deaf, Hard of hearing, and hearing loss people would love to have closed captions to know what is going on! Especially on Bomb threat news, weather news and more!! We all are not happy with NO CLOSED CPATIONS!! PLEASE have them FIX it for all of us!! It will be Helpful for all of us! It is nowadays 2012. Not 1950s!**

You may submit this form over the Internet at <http://www.fcc.gov/cgb/complaints.html>, by e-mail to fccinfo@fcc.gov, by fax to 1-866-418-0232, or by postal mail to:

Federal Communications Commission
Consumer & Governmental Affairs Bureau
Consumer Complaints
445 12th Street, SW
Washington, D.C. 20554

In addition, you may submit your complaint over the telephone by calling 1-888-CALL-FCC or 1-888-TELL-FCC (TTY). If you choose to submit your complaint over the telephone, an FCC customer service representative will fill out an electronic version of the form for you during your conversation. If you have any questions, feel free to contact the FCC at 1-888-CALL-FCC or 1-888-TELL-FCC (TTY).

FCC NOTICE REQUIRED BY THE PAPERWORK REDUCTION ACT AND THE PRIVACY ACT

The Federal Communications Commission is authorized under the Communications Act of 1934, as amended, to collect the personal information that we request in this form. This form is used for complaints that involve disability access. The public reporting for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information. If you have any comments on this burden estimate, or how we can improve the collection and reduce the burden it causes you, please write to the Federal Communications Commission, OMD-PER, Paperwork Reduction Project (3060-0874), Washington, DC 20554. We will also accept your comments regarding the Paperwork Reduction Act aspects of this collection via the Internet if you send them to PRA@fcc.gov. PLEASE DO NOT SEND YOUR COMPLETED FORMS TO THIS ADDRESS.

Form 2000C – Disability Access Complaint

***** ANSWER EACH QUESTION THAT APPLIES TO YOUR SPECIFIC COMPLAINT *****

Remember - You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060 - 0874.

In addition, the information that consumers provide when filling out FCC Form 2000 is covered by the system of records notice, FCC/CGB-1, Informal Complaints and Inquiries File (Broadcast, Common Carrier, and Wireless Telecommunications Bureau Radio Services). The Commission is authorized to request this information from consumers under 47 U.S.C. 206, 208, 301, 303, 309(e), 312, 362, 364, 386, 507, and 51; and 47 CFR 1.711 et seq.

Under this system of records notice, FCC/CGB-1, the FCC may disclose information that consumers provide as follows: when a record in this system involves a complaint against a company, the complaint is forwarded to the defendant who must, within a prescribed time frame, either satisfy the complaint or explain to the Commission and the complainant its failure to do so; where there is an indication of a violation or potential violation of a statute, regulation, rule, or order, records from this system may be referred to the appropriate Federal, state, or local agency responsible for investigating or prosecuting a violation or for enforcing or implementing the statute, rule, regulation, or order; a record from this system may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit; a record on an individual in this system of records may be disclosed, where pertinent, in any legal proceeding to which the Commission is a party before a court or administrative body; a record from this system of records may be disclosed to the Department of Justice or in a proceeding before a court or adjudicative body when: (a) the United States, the Commission, a component of the Commission, or, when represented by the government, an employee of the Commission is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Commission determines that the disclosure is relevant or necessary to the litigation; a record on an individual in this system of records may be disclosed to a Congressional office in response to an inquiry the individual has made to the Congressional office; a record from this system of records may be disclosed to GSA and NARA for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall not be used to make a determination about individuals.

In each of these cases, the FCC will determine whether disclosure of the information in this system of records notice is compatible with the purpose for which the records were collected. Furthermore, information in this system of records notice is available for public inspection after redaction of information that could identify the complainant or correspondent, i.e., name, address and/or telephone number.

THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, PUBLIC LAW 104-13, OCTOBER 1, 1995, 44 U.S.C. SECTION 3507 AND THE PRIVACY ACT OF 1974, PUBLIC LAW 93-579, DECEMBER 31, 1974, 5 U.S.C. SECTION 552a(e)(3).