

SINCLAIR BROADCAST GROUP

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August 29, 2012

Ms. Susan Kimmel
Ms. Sherita Kennedy
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

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AUG 29 2012

Federal Communications Commission
Bureau / Office**Re: Notices of Informal Complaint – Rita Hurd**
Case Number: 12-C00410733 (SK) (Hurd) (WEAR-TV)

Dear Ms. Kimmel and Ms. Kennedy:

On behalf of WEAR, LLC (the "Licensee"), licensee of WEAR-TV, Pensacola, Florida, Facility ID 71363 (the "Station"), this letter responds to the above-referenced Notice of Informal Complaint ("Notice") dated July 30, 2012.

The Notice was issued in response to a closed captioning complaint filed by Rita Hurd, who alleges that the Station failed to close caption its regular and break in weather reports during a period of heavy rains in the Gulf Coast Region encompassing Mobile, Alabama, and Pensacola, Florida. The inclement weather commenced on June 9, 2012 and concluded on June 11, 2012. Ms. Hurd alleges that the "rain continued a couple of days, but was the worst of the flooding started on the 10th...[t]here was no captioning on the weather reports...I had to rely on text messages from my daughter and visually looking whether or not I would flood." Ms. Hurd seeks a resolution involving "captions during weekday weather, and captions during impending emergencies such as flooding and impending storms." See Item 7 of FCC Form 2000C as submitted by Ms. Hurd.

Ms. Hurd's allegation that the Station failed to comply with the Commission's rules is incorrect. The Station, when providing emergency information, is obligated to provide such information in both an audible and visual format. Closed captioning is one of several visual formats. The Station fulfilled its obligations with respect to the June 9 through 11 period of heavy rain through the provision of numerous *visual* aids including maps, crawls, weather radar graphics and potential path projection graphics. Moreover, Ms. Hurd is incorrect in claiming that the Station did not caption its regularly scheduled weather segments. In fact, the weather segments in the Station's newscasts were captioned through electronic newsroom technology.

As mandated by Congress, and "out of concern that critical emergency information be available to every television viewer, including persons with hearing disabilities, the Commission adopted Section 79 [Closed and Video Description of Video Programming] of the rules."¹ Pursuant to Section 79.2 of the Commission's rules,

¹ *Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, and Accessibility of Emergency Programming*, Second Report and

television broadcasters that elect to provide "emergency information in the audible portion of programming [must] provide persons with hearing disabilities the same access to such information, either through a method of closed captioning *or another method of visual presentation*."² (Emphasis added). In addition to the use of closed captioning, the Commission has encouraged the use of open captioning in the form of crawls and scrolls and has indicated that other "methods could include already prepared signs, charts, or handwritten information contained on a whiteboard."³ This list is not exhaustive.

Section 79.2 defines emergency information as information, about a current emergency, that is intended to further the protection of life, health, safety and property, i.e. critical details regarding the emergency and how to respond to the emergency.⁴ Examples of emergencies covered include but are not limited to tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, and widespread power failures. Additionally, the rule section indicates that critical details include, but are not limited to specific details regarding the area that will be affected by the emergency, evacuation orders, detailed descriptions of the areas to be evacuated, specific evacuation routes, approved shelters or the way to take shelter in one's home, instructions on how to secure personal property, road closures, and how to obtain relief assistance.

As indicated above, and supported by the enclosed DVDs, the Station employed several visual formats, including maps, weather radar graphics, storm projection graphics and National Weather Service crawls in its efforts to provide its community with accurate and up-to-date information about the impact of the heavy rainfall during the period in question.

At approximately 8:45 a.m. on June 9, 2012, the Station began to display its Weathernet Flash Flood Warning. This is a small map graphic with radar overlay of the affected counties and a graphic stating "Flash Flood Warning". This graphic aired continuously during all programming. Beginning at approximately 10:01:30 a.m., the Station cut into its regular programming to provide a break in weather report. In addition, the Station provided coverage of the weather and potential flooding in its regularly scheduled weathercasts, which were captioned using electronic newsroom methodology.

NWS activated the EAS system for the areas of Mobile, Alabama and Southeastern Escambia County, Florida at 11:31 a.m. Escambia County includes Pensacola, the Station's community of license. Escambia County, Florida, did declare a local "State of Emergency" at 3:00 p.m. on June 9, 2012. It is the understanding of the Station that such a declaration is more of an internal procedural declaration for county government and workers, allowing the county to implement decisions without a special meeting of the county commission and county administrator. It also allowed the county to take internal steps to incur overtime costs for weather-related staff needs. During the period covered by this declaration evacuation orders were not issued by the local and

Order, 15 FCC Rcd 6615, 6622 (2000).

² *Waterman Broadcasting Corp. of Florida, Inc.*, 20 FCC Rcd 13534, 13535 (2005).

³ *Id.* at 13536.

⁴ 47 C.F.R. § 79.2(a)(2).

state governments, no curfews were ordered, and residents were not encouraged to seek shelter outside of their homes.

Accordingly, the visual Flash Flood Advisory map, which provided a visual depiction of the areas affected by flooding, conveyed the critical details of the emergency information to viewers with hearing disabilities. The Weathercast Flash Flood graphic ran continuously. The declaration of a State of Emergency was first verbally broadcast over the Station during a weather update at about 5:00 p.m. on June 9, and was included in the regularly scheduled 6:00 p.m. newscast that day, which was closed captioned.⁵ This form of visual information was consistent with Commission requirements.

In response to Ms. Hurd's request for captioning of the weekday weather reports, the fact is that the Station's regularly scheduled weather reports are already captioned in accordance with FCC requirements. The Station employs the electronic newsroom captioning technique, commonly referred to as ENR, in order to meet its closed captioning obligations for live programming. The Commission has stated that ENR "is commonly used for live programming, especially for newscasts, and creates captions from a news script computer or teleprompter. Only material that is scripted can be captioned using this technique and, thus, within a program live field reports, breaking news, sports and weather may remain uncaptioned."⁶

Although Section 79.1(b)(iv) of the Commission's rules requires that 100% of a video programming distributor's new nonexempt video programming must be provided with captions,⁷ Section 79.1(e)(3) provides that live programming captioned using the ENR will be considered captioned (except for affiliates of the top four networks located in the top 25 Nielsen Designated Market Areas ("DMAs")). Pensacola is in the 60th DMA, and thus qualifies to use ENR captioning in order to satisfy a station's closed captioning obligations in Section 79.1(b)(iv).⁸ Because the station uses ENR captioning, certain unscripted segments, including live field reports, breaking news and sports and weather reports, are not currently subject to closed captioning obligations. This is consistent with the Commission's expectations when it permitted use of the DNR captioning. Accordingly, the Licensee believes that it has, and continues to, comply with the Commission's closed captioning rules.

Please contact me if you have any questions or need any further information.

Sincerely yours,


Susan E. Domozych

Enclosure
sed/WEAR-TV
cc: Ms. Rita Hurd

⁵ The county's Emergency Operations Center did not communicate the State of Emergency alert to the Station until well after 4:00 pm.

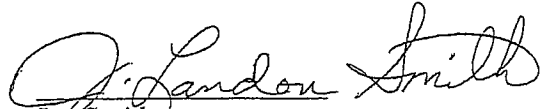
⁶ *Closed Captioning of Video Programming*, Order on Reconsideration 13 FCC Rcd 19973 (1998).

⁷ 47 C.F.R. § 79.1(b)(iv).

⁸ 47 C.F.R. § 79.1(e)(3).

DECLARATION

I, Joe Smith, Director of Operations at WEAR-TV, Pensacola Florida, hereby declare under penalty of perjury that I have reviewed the foregoing "Response to Informal Complaint" and, except for (a) matters cited therein contained in the FCC's records, (b) matters for which other support is provided, and (c) matters of which the Commission may take official notice, the facts set forth therein are true and correct to the best of my personal knowledge and belief.



Joe Smith

Dated: August 29, 2012
