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July 24, 2014

VIA HAND DELIVERY AND EMAIL

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

Re: KFVE(TV), Honolulu, Hawaii
Facility Identification Number 36917
FCC File Number 14-C00573823 (SK) (KFVE(TV))
Response to Notice of Informal Complaint

Dear Ms. Kimmel:

On behalf of HITV License Subsidiary, Inc. ("HITV"), the licensee of KFVE(TV), we hereby respond to the June 24, 2014 letter from the Commission's Consumer & Governmental Affairs Bureau (the "Letter"), attaching a complaint submitted to the Commission by _____, regarding the lack of closed captioning during programming that aired on the station on April 1, 2014.¹ The Letter asks that HITV confirm that it complied with Section 79.2 of the Commission's rules (the "Emergency Programming Rules").² As explained in more detail below, the Emergency Programming Rules did not apply to the April 1, 2014 broadcast because KFVE(TV) did not provide any emergency information to its viewers on that date.³

¹ Notice of Informal Complaint, from Susan L. Kimmel, Deputy Chief, Disability Rights Office, Consumer & Governmental Affairs Bureau, Federal Communications Commission, to KFVE, *et al.*, File No. 14- C00573823 (SK) (KFVE(TV)) (June 24, 2014). The Letter does not ask that HITV confirm that its broadcast complied with any other section of the Commission's rules, including the closed captioning obligations in Section 79.1. To the extent the Bureau seeks additional information about HITV's compliance with Section 79.1, HITV would be happy to supplement this response accordingly.

² See 47 C.F.R. § 79.2.

³ HITV is unable to provide a recording of the newscast referred to in _____ complaint. Although HITV does record its programming, HITV is limited on the amount of video it can store and regularly records over its older programming. By the time HITV began its investigation into this matter, the station was no longer in possession of a recording of video from the date in question.

Under the Emergency Programming Rules, whenever a video programming distributor is providing emergency information, the distributor must make that information accessible both aurally and visually. In particular, video programming distributors, such as KFVE(TV), must make “emergency information” accessible to viewers with hearing and visual disabilities.⁴ The Commission’s rules define “emergency information” as follows:

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.⁵

The news coverage that is the subject of _____ complaint was not an “emergency” triggering the Emergency Programming Rule. Rather, KFVE(TV) simply notified its viewers that an earthquake had occurred off the coast of Chile. These news updates occur frequently in Hawaii and typically the National Weather Service quickly issues an update with further information. In this instance, the National Weather Service confirmed that the earthquake did not create a tsunami. No lives or property in Honolulu were ever in any danger from the earthquake.

Moreover, the Commission’s Emergency Programming Rule, only applies to “current emergencies.” Thus, even if the earthquake had eventually produced a tsunami and become an “emergency,” the Emergency Programming Rule would only go into effect once the event became a “current emergency” and HITV began providing lifesaving information about that current emergency. The Commission’s enforcement actions in this area all involved emergencies occurring concurrently with the broadcast. In past cases, the Commission has sanctioned broadcasters who failed to provide visual and auditory information regarding live, ongoing emergencies.⁶ In each of those cases, the emergency was occurring at the moment of

⁴ 47 C.F.R. § 79.2(b).

⁵ *Id.* § 79.2(a)(2).

⁶ *In re ACC Licensee, Inc.*, 20 FCC Rcd 9832 (EB 2005) (licensee failed to provide descriptions during an active thunderstorm/tornado watch); *In re McGraw-Hill Broadcasting Co.*, 20 FCC Rcd 3981 (EB 2005) (licensee failed to provide descriptions during an active wildfire in the region); see *In re Fox Television Stations, Inc.*, 20 FCC Rcd 9847 (EB 2005) (licensee failed to provide descriptions during an active thunderstorm/tornado watch); *In re NBC Telemundo License Co.*, 20 FCC Rcd 9839 (EB 2005) (licensee failed to provide descriptions during an active thunderstorm/tornado watch); *In re Midwest Television, Inc.*, 20 FCC Rcd 3959 (EB 2005) (licensee failed to provide descriptions during an active wildfire in the region); *In re Fort Myers Broadcasting Co.*, 20 FCC Rcd 2201 (EB 2007) (licensee failed to provide descriptions during a hurricane which had made landfall); *In re Waterman Broadcasting Corp. of Florida, Inc.*, 20 FCC Rcd 13534 (EB 2005) (licensee failed to provide descriptions during a hurricane which had made landfall).



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the broadcast or when there was an imminent threat of an emergency for which broadcasters conveyed potentially lifesaving information. HITV is unaware of any case where the Commission has sanctioned a broadcaster for failing to comply with the Emergency Programming Rule for discussing the possibility of a future emergency that might develop. In short – as the text of Section 79.2(a)(2) makes clear – if a station is not providing information about a *current emergency*, the Emergency Programming Rule does not apply.

HITV did not live caption the coverage of the April 1st earthquake in Chile because, in its professional news judgment, the station was not covering an unfolding, live emergency impacting its local viewers. On that date, the station ran crawls every fifteen minutes between 2:30 p.m. and 4:52 p.m. that stated:

From the Hawaii News Now Newsroom: An earthquake with a preliminary magnitude of 8.2 has struck off the coast of Chile. The Pacific Tsunami Warning Center is evaluating the possible threat to Hawaii. No watches or warnings are in effect at this time for Hawaii.

The station also aired a seven minute cut-in at 2:52 p.m. that simply detailed the earthquake in Chile and informed viewers about the possibility of a tsunami forming in the Pacific. As the crawl noted, station personnel only discussed the possibility of a tsunami because at that time, no watches or warnings were put into effect. Indeed, the station's records show that no watch or warning ever resulted from the earthquake and that no emergency posed a threat to the station's local viewers.

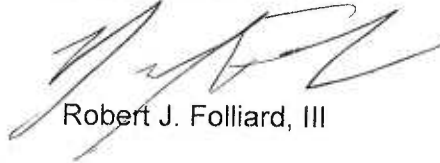
HITV is aware of its obligations under the Emergency Programming Rules and takes those obligations seriously. During live, unscripted news coverage of a current emergency the Emergency Programming Rules require that KFVE(TV) make the critical details regarding a current emergency accessible to viewers. KFVE(TV)'s practice is to do just that. During emergencies, HITV's long-standing practice is to ensure that all critical details provided in the broadcast are made accessible through crawls, on-screen graphics, or live captioning during each newscast.

In addition, KFVE(TV) provides several mechanisms, both telephone and email, by which viewers can inform the station of closed captioning problems. A viewer can report any closed captioning problems by emailing the station's Closed Captioning Concerns email at closedcaptioning@kfve.com. In addition, viewers can contact the Captioning Hotline about closed captioning concerns by telephone. A station representative receives and responds to any and all viewer comments or complaints within 24 hours or one business day. Should experience difficulties with the station's closed captioning in the future, HITV encourages her to use one of the contact methods listed above to inform the station.

Susan L. Kimmel
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If you should have any further questions or concerns, please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Folliard, III", written over a light blue horizontal line.

Robert J. Folliard, III

cc: Ms. Sherita Kennedy (via e-mail)

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Station KFVE(TV), Honolulu, HI

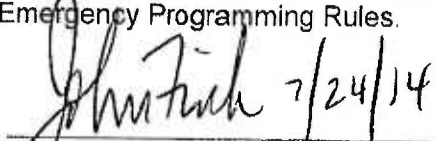
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File No. 14- C00573823 (SK)
(KFVE(TV))

DECLARATION OF JOHN FINK

My name is John Fink and I am General Manager of HITV License Subsidiary, Inc., licensee of KFVE(TV), Honolulu, Hawaii. Pursuant to Section 1.16 of the rules of the Federal Communications Commission, 47 C.F.R. § 1.16, I hereby declare that the following is true and correct to the best of my knowledge, information, and belief formed after reasonable inquiry.

1. On April 1, 2014, KFVE(TV) ran crawls every fifteen minutes from 2:30 p.m. to 4:52 p.m. indicating an earthquake struck off the coast of Chile and that no watches or warnings had been issued as a result.
2. KFVE(TV) aired a seven minute news cut-in at 2:52 p.m. to describe the earthquake and the possibility of a tsunami forming.
3. Station personnel did not view the Chilean earthquake or its aftermath as an on-going emergency that threatened the health, safety, or property of any of its viewers.
4. As described in the response prepared by Mr. Folliard, KFVE has procedures in place to ensure the station complies with the FCC's Emergency Programming Rules.



John Fink
July 24, 2014