

October 23, 2014

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

*Via First Class U.S. Mail*

Re: Official Notice of Informal Complaint  
FCC Case No. 14-C00613092-1 (Connolly) (KESQ-TV) (SK)

Dear Ms. Kimmel:

This firm is counsel to Gulf-California Broadcast Company, licensee of Television Station KESQ-TV, Palm Springs, California ("KESQ" or the "Station").

This letter responds to the informal complaint submitted to the Federal Communications Commission ("FCC") by Mr. Perry Connolly, pursuant to Section 713 of the Communications Act, 47 U.S.C. § 613, and Section 79.2 of the FCC's Rules, 47 C.F.R. § 79.2. This complaint has been assigned Case Number 14-C00613092-1 (Connolly) by your office (the "Complaint").

The Complaint alleges as follows:

"09/08/2014 08:15 AM During live broadcast about flood warning in Coachella Valley, KESQ and its partner CBSlocal2 neglected provision of live captioning for deaf people in this area. These stations broadcasted live for nearly one hour or so without captions."

By way of background, CBS Local 2 (referred to in the Complaint as "CBSlocal2") is the "dot 2" multicast program stream aired on KESQ. During the severe weather coverage at issue in the Complaint, the licensee was simulcasting its live coverage over KESQ's primary program stream and multicast program stream. *See* Declaration of Robert L. Smith ("Smith Declaration"), ¶ 3. Because the two program streams were simulcasting the same severe weather coverage, *see* Smith Declaration, ¶ 3, this Response covers the material that aired on both program streams.

KESQ is licensed to Palm Springs, California, which is located in the Palm Springs Designated Market Area ("DMA") which is the 148<sup>th</sup> largest DMA<sup>1</sup> in the country. As such,

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<sup>1</sup> The 2014-2015 DMA rankings are available at the following URL address:  
[www.tvb.org/media/file/Nielsen\\_2014-2015\\_DMA\\_Ranks.pdf](http://www.tvb.org/media/file/Nielsen_2014-2015_DMA_Ranks.pdf).

KESQ routinely relies on electronic newsroom technique (“ENT”) captioning to meet its closed captioning obligations for locally produced live programming, *see* Smith Declaration, ¶ 4, as it is permitted to do. *See* 47 C.F.R. § 79.1(e)(3) (“Live programming or repeats of programming originally transmitted live that are captioned using the so-called ‘electronic newsroom technique’ will be considered captioned” except for, in relevant part, Big Four network affiliates in the top 25 DMAs). Of course, the “enhanced ENT” closed captioning rules went into effect on June 30, 2014, *see* 47 C.F.R. § 79.1(e)(11), and KESQ has made appropriate adjustments to its newscast and live coverage procedures to meet the new standards for ENT closed captioning. *See* Smith Declaration, ¶¶ 4, 6. As described below, the package of visual elements used by KESQ during the September 8 storm coverage met the Licensee’s obligations under the emergency access rule, even though the Station did not use an outside third-party live closed captioner during the coverage.

As referenced in the Complaint, the Licensee broke into regular programming around 8:15 a.m. on September 8, 2014, to provide viewers with a report about a series of thunderstorms in the viewing area. *See* Smith Declaration, ¶ 5. As warranted by the conditions, the Station’s on-air coverage of the weather extended about an hour or so.<sup>2</sup> *See* Smith Declaration, ¶ 5. The Licensee routinely maintains recordings of its regularly-scheduled newscasts, but the Licensee does not have a recording of the coverage at issue here because it was not a regularly-scheduled newscast. *See* Smith Declaration, ¶ 4. As a result, there is no recording available to submit with this Response.

In order to meet the Licensee’s emergency access obligations—and consistent with the Station’s normal practice and protocol for severe weather coverage—during the meteorologist’s live report of the storm conditions on the morning of September 8, the on-duty News Producer prepared full screen text graphics to display important information being discussed by the meteorologist. Among other things, these graphics included information about the location and severity of the storm and road closures. *See* Smith Declaration, ¶ 5. In addition, the weather team prepared specific maps and full screen graphics containing text about flash flood warning information including the areas affected and the times at which the warnings would expire. These graphics aired repeatedly at appropriate times during the course of the Station’s live storm coverage on the morning of September 8. *See* Smith Declaration, ¶ 5.

In addition to the graphics, maps, and text supered on the screen, partway into the coverage the Station was also able to provide text in the closed captioning field for viewers who rely on closed captioning. More specifically, a second News Producer was able to get to the Station around 9 a.m., at which time relevant content was typed into the ENT system in order to provide closed captioning of the material discussed by the meteorologist. *See* Smith Declaration, ¶ 5. In other words, beginning around 9 a.m., the second News Producer listened to the live, unscripted on-air coverage and typed a summary into the ENT system, which caused it to appear

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<sup>2</sup> Initially, the Station’s News Director believed the quickly-moving thunderstorm event would be relatively short-lived, and, as a result, the Station’s outside, third-party emergency closed captioning company was not contacted. *See* Smith Declaration, ¶ 5.

in the closed captioning field on viewer television sets. *See* Smith Declaration, ¶ 5. In summary, then, while the storm coverage was not live closed captioned by an outside third-party captioner, the emergency information provided via audio was also provided in various visual formats, including text typed into the ENT system, maps and other on-screen graphics, and other on-screen textual visual aids.

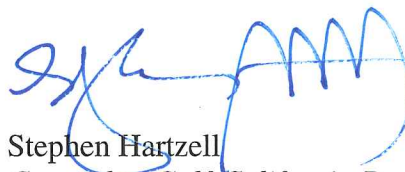
In light of the information provided above, the Licensee respectfully submits that it was in compliance in all material respects with the Commission's emergency access rules and requests that the Complaint be dismissed with no further action taken.

This Response is supported by the attached Declaration of Robert L. Smith, News Director for KESQ. In addition, 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.



Stephen Hartzell  
*Counsel to Gulf-California Broadcast Company*

Enclosures

cc: Sherita Kennedy, FCC (via email)  
Susan Kimmel, FCC (via email)  
Mr. Perry Connolly, via email (pare47@gmail.com)



### **CERTIFICATION OF LICENSEE**

I, Michael Stutz, hereby declare, under penalty of perjury, as follows:

1. I am greater than eighteen years of age and am competent to make this Declaration and Certification. I am General Manager of KESQ-TV and Vice President of Gulf-California Broadcast Company, licensee of KESQ-TV, Palm Springs, California ("KESQ"). I have held these positions at all relevant times.

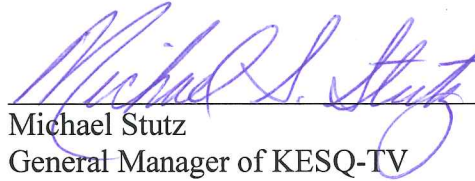
2. My signature below indicates, under penalty of perjury, that I have reviewed the Complaint and am familiar with its contents, I have reviewed the foregoing correspondence from Stephen Hartzell in response to the Complaint (the "Response"), and, to the best of my knowledge, information, and belief, I hereby verify the truth and accuracy of the information contained therein. To the extent that I do not have personal knowledge of particular facts set forth in the Response, I am relying on the Declaration of Robert L. Smith.

**[signature appears on following page]**

The undersigned, under penalty of perjury, declares the foregoing to be true, complete, and correct to the best of his personal knowledge.

This, the 23<sup>rd</sup> day of October, 2014.

By:



Michael Stutz

General Manager of KESQ-TV

Vice President of Gulf-California Broadcast Company

## DECLARATION OF ROBERT L. SMITH

I, Robert L. Smith, hereby declare, under penalty of perjury, as follows:

1. I am greater than eighteen years of age and am competent to make this Declaration. I am News Director of KESQ-TV, Palm Springs, California ("KESQ"). I have held this position since June 2006.

2. My signature below indicates, under penalty of perjury, that I have reviewed the Complaint, I have reviewed the foregoing correspondence from Stephen Hartzell (the "Response") in response to the Complaint, and, to the best of my knowledge, information, and belief, I hereby verify the truth and accuracy of the information contained therein. I submit this Declaration in support of the Response.

3. Gulf-California Broadcast Company owns and operates KESQ-TV ("KESQ") in the Palm Springs Designated Market Area ("DMA"), which is the 148<sup>th</sup> largest DMA. KESQ's "dot 2" multicast program stream is branded as CBS Local 2, and the Complaint refers to it as "CBSlocal2." During our severe weather coverage on September 8, 2014, we simulcast our coverage on KESQ's primary program stream and multicast program stream.

4. At KESQ, we routinely use the ENT closed captioning method to meet our closed captioning obligations as is allowed under the FCC's rules. When the "enhanced" ENT closed captioning rules went into effect on June 30, 2014, we adjusted our newsroom practices in order to meet the new standards. It is our normal practice to record our regularly-scheduled newscasts, but we do not routinely record unscheduled newscasts such as the storm coverage we aired on the morning of September 8, 2014, and we do not have a recording of the coverage that is referenced in the Complaint.

5. On September 8, 2014, we broke into regular programming at around 8:15 a.m. in order to cover a thunderstorm affecting the viewing area. It appeared to us initially that the event would be short-lived and rapidly moving and, as a result, we did not call our outside live closed captioning company. Instead of closed captioning, we used a variety of other methods in order to provide a visual depiction of the important information that was being provided aurally. For example, our News Producer prepared full screen text graphics to display important information being discussed by the meteorologist, which included information about where the storm was, how severe it was, and where roads were closed. Our weather team also prepared maps that showed the affected areas and full screen graphics containing text about flash flood warning information including the areas affected and when the warnings would expire. These graphics aired repeatedly at appropriate times during our live storm coverage. By 9 a.m., a second News Producer was able to get to the studio and began typing content into our ENT system so that important information discussed by the meteorologist would appear as closed captioning for our hearing impaired viewers. Although this information was not typed verbatim, it was intended to provide the main critical points that were being provided by audio. Our live storm coverage ended approximately an hour or a little more than an hour after we began.

6. We take both our emergency access and closed captioning obligations very seriously. As mentioned above, prior to June 30, 2014, we examined our newsroom practices and protocols and tweaked them to ensure they meet the Commission's new "enhanced" ENT closed captioning rules. We believe that our performance on September 8 met both the letter and the spirit of the new rules and that we provided the important emergency information in various visual formats to our viewers while our meteorologist was providing that information orally.

**[signature appears on following page]**

The undersigned, under penalty of perjury, declares the foregoing to be true, complete, and correct to the best of his personal knowledge.

This, the 23<sup>rd</sup> day of October, 2014.

By: Robert L. Smith  
Robert L. Smith  
News Director, KESQ-TV