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January 29, 2020

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

Via Email to Sherita.Kennedy@fcc.gov

Attn: Sherita Kennedy

Re: Official Notice of Informal Complaint
FCC Ticket No. 3725300

Dear Ms. Kennedy:

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

Pursuant to Sections 713 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 613, 154(i), and Section 79.1 of the FCC’s Rules, 47 C.F.R. § 79.1, this letter responds to:

- (1) two informal complaints submitted to the Federal Communications Commission (“FCC”) by [REDACTED], initially assigned Ticket Numbers 3725300 and 3725809 and thereafter merged into Ticket Number 3725300 (the “Complaint”) by your office; and
- (2) the Further Notice of Informal Complaint (the “Further Notice”), issued by your office on December 31, 2019.

Station personnel submitted by email an initial response to the Complaint on or about December 30, 2019. The response resulted in the Further Notice to which this letter responds. This response to the Further Notice is timely filed within thirty (30) days of the date of the Further Notice.

First, KESQ wishes to explain that it takes its closed captioning obligations and its service to the entire viewing audience seriously. KESQ appreciates when its viewers share their concerns about closed captioning and is committed to resolving them so that the Station’s programming is accessible to *all* of its viewers. Indeed, KESQ has reached out to [REDACTED] to verify and

confirm both that KESQ has resolved the issue identified in his Complaint and that he is currently receiving captioning for KESQ's programming. *See* Declaration of KESQ General Manager.

██████████ Complaint addresses the captioning of KESQ's hour-long morning news programming on Saturday, December 21, 2019, and Sunday, December 22, 2019. The Complaint states that those two morning news broadcasts lacked captioning.

As an initial matter, KESQ observes that the Palm Springs Designated Market Area (DMA) is not a Top-25 DMA and, thus, no station in the market—including KESQ—is required by the Commission's closed captioning rules to provide live, real-time captioning. *See* 47 C.F.R. § 79.1(e)(3). Importantly, KESQ is aware of and makes reasonable, appropriate efforts to meet the expectations of the "enhanced" ENT closed captioning standards set forth in the Commission's rules. *See* 47 C.F.R. § 79.1(e)(11). Despite KESQ's past and continuing compliance with those rules, however, a late-afternoon technical glitch on Friday, December 20, 2019, rendered captionless KESQ's weekend news programming.

The Further Notice directs the Station to answer three questions, as follows:

- (i) *Explain the reason(s) for the extended time lapse during which captioning was out of transmission.*

The reason for the period of time without captions was a technical malfunction, compounded by unavailable third-party technical support staff.

Specifically, at approximately 4:15 PM PST on Friday, December 20, 2019,¹ KESQ's newsroom teleprompter malfunctioned such that the onboard computer software failed entirely.² This was the first malfunction in KESQ's seven years using this teleprompter. Station personnel—including four engineers—immediately reinstalled the teleprompter's operating system and downloaded the "autoscript" software necessary to both feed the teleprompter and supply the FCC-compliant ENT closed-captioning feed. However, after multiple initialization attempts, Station personnel were unable to enable the autoscript software. KESQ immediately contacted autoscript's Connecticut-based technical support line, who provided telephonic assistance until the telephone line was unexpectedly disconnected. Although KESQ immediately tried to reengage with autoscript technical support after disconnection, the support lines—which were located in a time zone three hours later than that of KESQ—had already closed both for the night and the weekend. The Station's four engineers continued to work with the autoscript software until approximately 7:00 PM PST that evening, but were unable to enable the software. Realizing that it could not

¹ KESQ's initial email to your office regarding the Complaint incorrectly stated this date as "Thursday, December 20th." This incorrect day-of-week designation was a scrivener's error which KESQ wishes to correct in this letter response.

² The factual statements in this paragraph are supported by the Declaration of KESQ's Chief Engineer attached hereto and incorporated herein.

enable autoscript without technical support, KESQ promptly contacted autoscript technical support on the very next day they were again available to assist—the morning of Monday, December 23, 2019—and restored newscast captioning before the noon newscast that day.

In summary, a team of four Station engineers made diligent efforts in real-time to resolve and correct the situation causing the closed captioning error, but, due to circumstances outside its control, KESQ staff were unable to correct the error until Monday morning.

(ii) *Identify the specific programming affected by the outage.*

As described in detail above, ultimately, due to the teleprompter's unprecedented and unforeseen technical malfunction and KESQ's inability to successfully enable the autoscript software without the assistance of autoscript technical support, which third-party technical support was unavailable after hours and over the weekend, KESQ's newscasts during the period from approximately 4:15 PM PST December 20, 2019, to 7:00 AM PST on December 23, 2019, lacked captioning. The Station restored captioning as soon as it was able to obtain the requisite technical support, and all of KESQ's other captioning equipment remained (and remains) 100% functional.

(iii) *Provide information, including relevant records, sufficient to demonstrate that it has monitored its captioning equipment, has performed technical equipment checks, and has promptly undertaken repairs as needed to ensure that equipment is operational and in good working order.*

KESQ's studio monitors have been (and will continue to be) at all times displayed with closed captioning enabled to verify the successful captioning of all KESQ programming. So too with KESQ's broadcast feed monitored at the News-Press & Gazette Company corporate headquarters (the parent company of Gulf-California Broadcast Company). Likewise, the Station's teleprompter is only seven years old and is constantly evaluated as it is used every day multiple times per day. The Station does not keep records of these efforts; however, the attached Declaration of KESQ's Chief Engineer supports these maintenance and monitoring processes.

* * *

Finally, KESQ wants [REDACTED] to know that it hears and cares about his concerns. KESQ invites [REDACTED] (and all of its viewers) to contact the Station directly in the future when there are concerns about the closed captioning being provided in programming; that way, viewers will be able to receive a speedier and more direct response to any closed captioning concerns.

This letter is being emailed to [REDACTED] at the same time it is being emailed to the Commission's Disability Rights Office. This Response is supported by the attached Declaration of the Station's Chief Engineer and the Declaration and Certification of the Station's General Manager, which indicates that he has read this letter and that to the best of his knowledge the information is true and correct.

Disability Rights Office
Consumer & Governmental Affairs Bureau
January 29, 2020
Page 4

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.

/s/ _____
Elizabeth Spainhour
Patrick Cross
Counsel to Gulf-California Broadcast Company

Enclosures

cc: 

DECLARATION AND CERTIFICATION OF KESQ GENERAL MANAGER

I, Jerry Upham, hereby declare, under penalty of perjury, as follows:

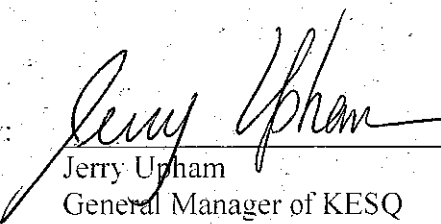
1. I am greater than eighteen years of age and am competent to make this Declaration and Certification. I am the General Manager of KESQ. I have held this position at all relevant times.
2. Following receipt of the Complaint from [REDACTED], on or about December 27, 2020, I called [REDACTED] and spoke with him about his Complaint. I explained to him the technical malfunction that occurred from the afternoon of December 20 through the morning of December 23, 2019, which caused closed captioning not to be provided. I also explained that the Station had resolved the issue. I verified that [REDACTED] was, in fact, receiving closed captioning on KESQ as of the time of my call.
3. 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 Elizabeth Spainhour and Patrick Cross in response to the Complaint (the "Response"), and, except for those items of which official notice may be taken or those that are supported by references to separate authority, I hereby verify, to the best of my knowledge, information, and belief, the truth and accuracy of the factual information contained therein.

[signature appears on following page]

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

This, the 28th day of January, 2020.

By:


Jerry Upham

General Manager of KESQ

DECLARATION OF KESQ CHIEF ENGINEER

I, John Cook, 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 the Chief Engineer of KESQ. I have held this position at all relevant times.

2. At approximately 4:15 PM PST on Friday, December 20, 2019, KESQ's newsroom teleprompter malfunctioned. The onboard computer software failed entirely. The teleprompter is seven years old and this was the first malfunction we have experienced. When the malfunction occurred, I and three other station engineers immediately started work to reinstall the teleprompter's operating system and download the "autoscript" software necessary to feed the teleprompter and supply the closed-captioning feed. We tried multiple times to initiate, but we could not enable the autoscript software. We immediately contacted autoscript's technical support line, which is based in Connecticut on the east coast. Technical support provided assistance for a period until the telephone line suddenly disconnected. We made multiple attempts to reengage technical support by phone, but by that time the support lines had already closed both for the night and the weekend. We could not make contact with the person who had been providing support, and no other technical support representative could be contacted through the support line. I and our three other engineers continued to work with the autoscript software until approximately 7:00 PM PST that evening, but we still could not enable the software. We stopped our efforts at that time because we knew we needed the assistance of technical support. I contacted autoscript technical support on the morning of Monday, December 23, 2019, and with their help we was able to enable the autoscript software and resume newscast captioning before our 12 PM PST newscast that day.

3. KESQ's studio monitors are at all times displayed with closed captioning enabled to verify the successful captioning of all KESQ programming. It is my understanding that KESQ's broadcast feed is monitored at the News-Press & Gazette Company corporate headquarters. The Station's teleprompter is only seven years old and is constantly evaluated as we use it every day multiple times per day for our newscasts. I am not aware of any other standard industry practices related to the monitoring and maintenance of teleprompter or ENT equipment. We do not keep formal records or logs of our maintenance and monitoring for teleprompter or ENT equipment.

[signature appears on following page]

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

This, the 28th day of January, 2020.

By:



John Cook

Chief Engineer of KESQ