



WELLS FARGO CAPITOL CENTER
150 FAYETTEVILLE STREET, SUITE 1700
RALEIGH, NC 27601

T 919.839.0300
F 919.839.0304
WWW.BROOKSPIERCE.COM

March 2, 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;
Theodore.Marcus@fcc.gov*

Attn: Sherita Kennedy
Theodore C. Marcus

Re: Supplemental Response to Official Notice of Informal Complaint
FCC Ticket No. 3726880

Dear Ms. Kennedy and Mr. Marcus:

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 supplements the Station's response by letter dated January 19, 2020 (the "January 2020 Response") to:

- (1) an informal complaint submitted to the Federal Communications Commission ("FCC") by [REDACTED], and assigned Ticket Number 3726880 (the "Complaint") by your office; and
- (2) the Further Notice of Informal Complaint (the "Further Notice"), issued by your office on December 31, 2019.

Specifically, this response supplements the January 2020 Response by: (1) providing additional background on the technical issues that gave rise to the closed captioning outage addressed in the January 2020 Response; and (2) detailing the actions taken thus far, and that will be taken going forward, by the Station and its corporate parent to help prevent recurrence.

(1) Additional Background on the Technical Issues that Gave Rise to the Closed Captioning Outage Addressed in the January 2020 Response

As noted in the January 2020 Response, the reason for the period of time without captions was a technical malfunction, compounded by unavailable third-party technical support staff.¹ This supplement provides additional background concerning the facts and circumstances.

Gulf-California wishes to clarify that when the events of December 20–23, 2019 occurred, several circumstances caused the Station not to realize that its local news programming was without captioning until KESQ personnel successfully resolved the underlying technical issue with the station’s teleprompter.

As an initial matter, and as stated in the January 2020 Response, when the underlying teleprompter malfunction occurred KESQ deployed four engineers in an attempt to repair the teleprompter in time for the impending 5:00 PM newscast. The 5:00 PM newscast was scheduled to air approximately 45 minutes after the malfunction occurred. Ultimately, KESQ’s engineers were only able to make the 5:00 PM newscast feasible by rewiring aspects of the Station’s core technical functionality so that another teleprompter could be used for the newscast. During that time, Station personnel were so focused on ensuring that the 5:00 PM newscast could air that they did not realize that the underlying technical issue would also cause captioning to fail for KESQ’s newscasts. Engineers assumed that when the other teleprompter was connected to the news playout system the closed captioning would resume. Because KESQ personnel were so focused on restoring teleprompter service in time to successfully air the 5:00 PM news, the Station did not otherwise detect the lack of captioning via any form of visual notice.

Under normal circumstances, KESQ would nonetheless have been apprised of the lack of captioning via an automated email generated by a remote monitoring system in place at the broadcast operations center (the “BOC”) of the Station’s corporate parent, located in Colorado Springs, Colorado.² KESQ was accustomed to and had received automated email notifications successfully in the past. Unfortunately, however, the BOC’s monitoring system had recently undergone a software update that inadvertently—and unbeknownst to Station personnel or the personnel of its corporate parent—reconfigured aspects of the system such that no alert was sent to KESQ. The Station, therefore, in this case did not receive the typical email alert related to missing closed captioning to which it was accustomed. Had the Station personnel known that local news programming was without captioning during this period, and had Station personnel not been able to return closed captioning, Station personnel would have contacted KESQ’s long-time, contract live captioning firm U.S. Captioning Company to provide live captioning in line with the Station’s usual practice.

¹ This supplement incorporates by reference the further facts and explanation set forth in the January 2020 Response.

² The specific monitoring device used by KESQ is a Grass Valley Kaleido-X16-D, which constantly monitors the presence of captions (as well as audio and video) in each video stream. In turn, the Grass Valley Kaleido-X16-D is remotely monitored by the BOC, which triggers an automated email notification when monitoring indicates that captions have not appeared in a video stream for more than 300 seconds.

(2) Actions Taken Thus Far, and Going Forward, to Help Prevent Recurrence of KESQ's December 20–23, 2019 Closed Captioning Issues

KESQ was very concerned when it learned that its local newscasts were without captioning during the period from 5:00 PM PST on Friday, December 20, 2019 to 7:00 AM PST on Monday, December 23, 2019. That, in turn, caused KESQ to reexamine its closed captioning protocols to remedy existing holes in its protocols and implement additional measures to help prevent the recurrence of the events of December 20–23, 2019. As outlined below, KESQ now has in place a number of redundant analog and digital systems to identify any loss of closed captioning.

First, the BOC's engineering team has restored the automatic transmittal of email notifications to KESQ personnel when a closed captioning failure occurs, thus reversing the inadvertent, software-triggered "shut off" described above. The Station has tested the system to ensure that KESQ personnel are, in fact, receiving notifications; indeed, Station personnel are now receiving email notifications and additional personnel have been added to the distribution list, including the General Manager and Operations Manager.

Second, in addition to the automated message sent out by the BOC in the event of a closed captioning failure, further visual warning is provided at both the BOC and the Station. At the same time the automated message is triggered an orange bar with the text "Closed Caption Loss" is also automatically triggered and overlaid on the video appearing on the monitor at the BOC. In addition, station personnel have confirmed that all monitors in the KESQ control room have closed captioning enabled.

Third, KESQ has created and placed at the producer's station in each control room a log book for monitoring the successful broadcast of closed captioning. For each newscast the producer on staff must independently visually verify that closed captioning is, in fact, being broadcast, and then so indicate in the log book along with the producer's signature. All producers have been notified of and trained on this requirement. This procedure is now being incorporated into new producer onboarding, as well.

Fourth, KESQ now requires the director for each newscast to independently visually verify that closed captioning is, in fact, being broadcast. Upon visual verification, the director on staff must orally confirm to the producer on staff that captions are being broadcast. All directors have been notified of and trained on this requirement. This procedure is now being incorporated into new director onboarding, as well.

If any of the above mechanisms—or if any station personnel independently—identify a closed captioning failure, then KESQ has adopted additional response procedures. Initially, the director and/or master control staff must confirm that closed captioning has failed and, if it has, that there is no immediately available solution. Next, the local engineering team on staff must be alerted so that they can attempt to fix the problem. Finally, if the local engineering team is unable to fix the problem, station personnel are to contact and secure live captioning from U.S. Captioning

Disability Rights Office
Consumer & Governmental Affairs Bureau
March 2, 2020
Page 4

Company. Instructions regarding how to contact and implement live captioning from U.S. Captioning Company are posted prominently in each control room.

* * *

In sum, KESQ staff were surprised and disheartened by the multiple unforeseen technical issues which gave rise to the loss of captioning for the Station's local newscasts from 5:00 PM PST on Friday, December 20, 2019 to 7:00 AM PST on Monday, December 23, 2019. The Station recognizes the importance of closed captioning to its audience. KESQ has therefore proactively identified and remedied the technical gaps in its preexisting system and implemented additional, redundant systems to help prevent prolonged captioning loss, even in the unlikely event of such a unique combination of technical issues arising again in the future.

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. I was surprised and disheartened when I learned that KESQ's news programming lacked closed captioning from 5:00 PM PST on Friday, December 20, 2019 to 7:00 AM PST on Monday, December 23, 2019. In light of that discovery, KESQ took multiple steps to ensure that the issues that caused the lack of captioning do not repeat and that KESQ has additional processes in place to identify and remedy any future loss of captioning.

3. The producer for each newscast now must visually verify that closed captioning is being broadcast. The producer must then confirm that visual verification in writing in a logbook kept at his or her station. The producer also must sign the entry. All producers have been notified of and trained on this requirement. We have also incorporated this requirement into our new producer training.

4. The director for each newscast now must visually verify and orally confirm to the producer that closed captioning is being broadcast. All directors have been notified of and trained on this requirement. We have also incorporated this requirement into our new director training.

5. Whenever an automated email notification that captioning loss has occurred is triggered at our corporate parent's broadcast operations center, an orange bar with the text "Closed Caption Loss" is also automatically triggered and overlaid on the video transmitted to the monitor on KESQ's multiviewer wall. This has functioned properly as of February 2020.

6. When a closed captioning failure is identified, KESQ personnel have been directed to follow a specific procedure. First, the director and/or master control staff must confirm that closed captioning has failed and see if there is a simple fix. Next, the local engineering team must be alerted so that they can attempt to fix the problem. If the local engineering team is unable to fix the problem, station personnel must then order live captioning from U.S. Captioning Company. Instructions regarding how to contact and implement live captioning from U.S. Captioning Company are posted prominently in each control room.

7. Since approximately May 2014 KESQ has had, and continues to have, a contract with U.S. Captioning Company.

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 January 19, 2020 correspondence from Elizabeth Spainhour and Patrick Cross in response to the Complaint (the "Response"), I have reviewed this supplemental correspondence from Elizabeth Spainhour and Patrick Cross supplementing 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

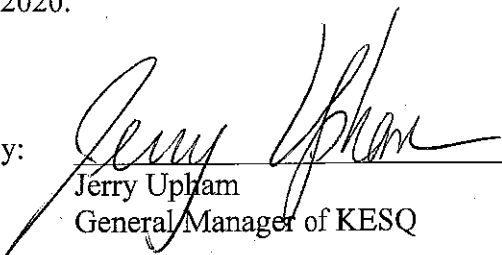
knowledge, information, and belief, the truth and accuracy of the factual information contained therein.

[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 27th day of February, 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 all times relevant to [REDACTED] informal complaint (Ticket Numbers 3725300 and 3725809 and thereafter merged into Ticket Number 3725300), I understood that our corporate parent's broadcast operations center (the "BOC") had a system in place to automatically send a message to my corporate email address notifying me when closed captioning loss occurred. I had received such messages in the past and relied on such messages.

3. On Friday, December 20, 2019, because I relied on the email notifications described in the preceding paragraph, and because our engineers were so focused on getting a teleprompter up and running so that we could successfully broadcast the 5:00 PM PST news, I did not otherwise verify that closed captioning was running after we successfully restored teleprompter service. To restore teleprompter service, we had to bring in a teleprompter from another studio and hardwire that teleprompter into KESQ's core broadcast systems in place of the malfunctioning teleprompter.

4. In light of the events of December 20 to December 23, the BOC has since fixed the automated notification system described in paragraph 2 above. We have tested and I have since received automated notifications from that system as of February 2020.

[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 27th day of February, 2020.

By:

A handwritten signature in black ink, appearing to read 'John Cook', written over a horizontal line.

John Cook

Chief Engineer of KESQ

DECLARATION AND CERTIFICATION OF NEWS PRESS & GAZETTE COMPANY
DIGITAL VIDEO ENGINEER

I, Rick Farrow, 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 a Digital Video Engineer for the News-Press & Gazette Company (“NPG”), the corporate parent of KESQ. I have held this position at all relevant times.

2. NPG has a broadcast operations center (the “BOC”) located in Colorado Springs, Colorado. The BOC includes audio, video, and closed captioning monitoring for all NPG television stations across the ten markets in which NPG and its subsidiaries operate.

3. For caption presence testing and logging, KESQ utilizes a Grass Valley Kaleido-X16-D. This device constantly monitors audio, video, and captions presence in each video stream. The device is remotely monitored by the BOC.

4. Closed captions are checked for the presence of 608 or 708 data. The monitor looks for 608 CC1 or 708 Service 1. If both types of captions are missing for more than 300 seconds, an alarm is generated and logged.

5. When an alarm generates, several actions take place. The monitor on the multiviewer wall in the station and at the BOC shows an orange bar in the middle of the video which states “Closed Caption Loss.” Additionally, an automated email is sent by the BOC to the station’s chief engineer and any other station personnel identified by the chief engineer. In the case of KESQ, the general manager, chief engineer, and other engineering staff are programmed to receive alerts.

[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 27th day of February, 2020.

By:

A handwritten signature in black ink, appearing to read 'Rick Farrow', written over a horizontal line.

Rick Farrow

Digital Video Engineer for NPG