

YOAN STOUT
1931 MURFREESBORO PIKE
NASHVILLE, TN 37217

LAW DEPARTMENT

-10 10 AM MAR 10 2008

3/05/08

Marlene Dortch, Secretary
Federal Communications Commission
445 12th St SW
Washington, DC 20554-0005

FORMAL COMPLAINT

This is a formal complaint against a Broadcast Licensee for willful violation of Section 1464 of Title 18, United States Code. There was broadcast material that was in violation of law because of obscene, indecent, or profane programming.

The complaint concerns the broadcast material on:

NETWORK: NBC and Affiliate Stations

STATION CALL LETTERS: WSMV-TV
Community of License: NASHVILLE, TN
FACILITY ID: 41232

PROGRAM TITLE: Las Vegas
BROADCAST DATE: February 15, 2008
BROADCAST TIMES: 9:00 PM CST

Documentation of the indecent material on which my COMPLAINT is based is provided below. A copy of the video has already been filed with the FCC and is available from: Parents Television Council, 707 Wilshire Boulevard #2075, Los Angeles, CA 90017.

Documentation -----

Three girls gather together in the center of the casino floor and begin to disrobe. They strip until they are naked then begin running around the casino. In the security office, the girls can be seen on the television monitors running around the casino naked. Their buttocks are visible, and only shadows obscure their breasts and groins.

End Documentation -----

Complainant also believes that such broadcast material is patently offensive:

- (a.) The material describes or depicts sexual or excretory organs or activities
- (b) It is patently offensive as measured by contemporary community standards for the broadcast medium and thus apparently indecent.
- (c) Especially offensive because it was broadcast at an hour when millions of children were watching between 6 a.m. and 10 p.m.

Section 1464 of Title 18, United States Code, prohibits the broadcast of obscene, indecent, or profane programming. The FCC rules implementing that statute, a subsequent statute establishing a "safe harbor" during certain hours, and the Act prohibit radio and television stations from broadcasting obscene material at any time and indecent material between 6 a.m. and 10 p.m. The indecent material was broadcast within the 6 a.m. to 10 p.m. time frame relevant to an indecency determination under section 73.3999 of the Commission's rules.

Section 1464 of Title 18, United States Code, prohibits the broadcast of obscene, indecent, or profane programming. The FCC rules implementing that statute, a subsequent statute establishing a "safe harbor" during certain hours, and the Act prohibit radio and television stations from broadcasting obscene material at any time and indecent material between 6 a.m. and 10 p.m. The indecent material was broadcast within the 6 a.m. to 10 p.m. time frame relevant to an indecency determination under section 73.3999 of the Commission's rules.

For the reasons above stated, Complainant urges the FCC to exercise its responsibility to enforce the existing law against indecency on broadcast TV between the hours of 6 a.m. and 10 p.m. (Title 18, U.S. Code, Section 1464) by levying severe sanctions against the broadcasters of this program.

Complainant requests that since the broadcast television licensee willfully violated the law that it be liable to the United States for a forfeiture penalty. The legislative history to Section 312(f)(1) clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, and the Commission has so interpreted the term in the Section 503(b) context.

The fact that Broadcast Licensee may not have originated the programming in question is irrelevant to whether there is an indecency violation. See Review of the Commission's Regulations Governing Programming Practices of Broadcast Television Networks and Affiliates, Notice of Proposed Rulemaking, 10 FCC Rcd 11951,11961, P 20 (1995)

Complainant requests the maximum monetary forfeiture statutory penalty amount against the Licensee for broadcasting indecent material in apparent violation of 18 U.S.C. S: 1464 and Section 73.3999 of the Commission's rules.

Complainant certifies that, to the best of my knowledge and belief, all the information on and attached to this affidavit is true, correct, and complete and made in good faith.

Complainant also certifies a true and correct copy of the foregoing document is being served this day on the licensee of record in the manner specified, via US regular mail, postage prepaid.

Sincerely,

YOAN STOUT
1931 MURFREESBORO PIKE
NASHVILLE, TN 37217

Cc:
MEREDITH CORPORATION
1716 LOCUST STREET
DES MOINES, IA 50309

United States Government
Federal Communications Commission
Consumer & Governmental Affairs Bureau
Disability Rights Office
445 12th Street, SW
Washington, D.C. 20554

OFFICIAL
NOTICE OF INFORMAL COMPLAINT

July 18, 2011

In reply refer to case number: 11-C00296043 (SK)
(Connor) (WSMV-TV)

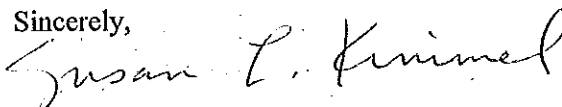
THE COMPANY IDENTIFIED IN THE ATTACHED COMPLAINT IS REQUIRED TO RESPOND TO THIS NOTICE OF INFORMAL COMPLAINT WITHIN 30 DAYS OF THE DATE OF THIS NOTICE. Failure of any person to answer any lawful Commission inquiry is considered a misdemeanor punishable by a fine under Section 409(m) of the Communications Act (Act), 47 U.S.C. § 409(m). Further, failure to comply with any order of the Commission can result in prosecution under Section 401(b) of the Act, 47 U.S.C. § 401(b). Section 501 of the Act, 47 U.S.C. § 501, and Section 503(b)(1)(B) of the Act, 47 U.S.C. § 503(b)(1)(B), provide for forfeiture penalties against any person who willfully fails to follow the directives of the Act or of a Commission order. The Commission can impose forfeiture penalties of up to \$1.2 million for certain types of violations.

The attached complaints were filed with the Commission pursuant to Section 713 of the Act, 47 U.S.C. § 613, and Section 79.1 of the Commission's Rules, 47 C.F.R. § 79.1. A letter acknowledging your company's receipt of this Notice and of the enclosed complaints should be sent to each consumer Complainant as soon as your company receives this Notice. Pursuant to Sections 713 and 4(i) of the Act, 47 U.S.C. §§ 613, 154(i), and Section 79.1(g) of the Commission's Rules, 47 C.F.R. § 79.1(g), we are forwarding a copy of the complaint so that your company may satisfy or answer the complaint based on a thorough review of all relevant records and other information. Your company should respond specifically to all material allegations raised in each complaint and summarize the actions taken by your company to satisfy the complaint.

Written responses must be filed with the Commission at 445 12th St., SW, Washington, D.C. 20554. A separate response should be filed for each individual complaint. Each response should include: (1) the Complainant's name, and (2) the Case number. Companies are directed to send copies of their responses to the complainant at the same time their responses are forwarded to the Commission.

Due to heightened security measures undertaken in Washington, D.C., and at this agency, you should also send an electronic copy of the response letter to Susan.Kimmel@fcc.gov AND to Sherita.Kennedy@fcc.gov. Companies are directed to send copies of their responses to consumers at the same time their responses are forwarded to the Commission. Each company required to respond to this Notice is directed to retain all records until final Commission disposition of the complaints. If you have any questions regarding this Notice, please call or email Sherita Kennedy at (202) 418-0287 or Sherita.Kennedy@fcc.gov, and leave a detailed message specifying the calling company name, the Case number, and the specific questions that you would like to have answered.

Sincerely,



Susan L. Kimmel, Deputy Chief
Disability Rights Office/CGB

Attachment(s)
K:613/79.1



June 27, 2011

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

Re: Stephen Conner
306 Grandview Drive
Old Hickory, TN 37138

FCC IC File Number: 11-C00296043 and 11-C00293256 (SK)
ESL Ticket Number: ESL00328874
Response Type: Notice of Informal Complaint
Date of Notice: June 8, 2011

Dear Sir/Madam:

This letter is in response to the complaint filed by Mr. Stephen Conner and received by Comcast on May 20, 2011 regarding Closed Captioning not working properly channels WSMV-TV channel 4, WZTV-TV/Fox 17. In particular, the customer complains that the captioning on this channel "randomly cuts out" during certain morning programming.

Upon receipt of the complaint from the customer, the Comcast System immediately investigated the complaint. Comcast technicians ensured that our headend equipment was working properly and was appropriately passing through the closed captions that the System received from the broadcaster. In addition, we audited the broadcaster's content. Currently, it appears that the problem is related to the local Fox 17 and WSMV-TV channel 4 affiliate's authoring of the caption data during local, live broadcasts. Comcast has contacted the broadcaster and made them aware of this captioning complaint. Comcast is always happy to work with the broadcasters on these issues. Nevertheless, please note that pursuant to 79.1(e)(9) Comcast is only required to pass-through captions, and not required to provide the closed captioning, for programming that by law is not subject to Comcast's editorial discretion (i.e., must-carry stations, leased access and PEG programming).

I trust that this provides your office with the information required in this matter. Please do not hesitate to contact me directly at 615-750-8973 should you have any questions or need additional information. Comcast looks forward to receiving confirmation from the Commission upon closure of file #.11-C00296043 and 11-C00293256 (SK)

Sincerely,

Patsy Davenport
Customer Care Advocate

CC: Stephen Conner

Admin 2000 [Switch to Admin1088]

HOME SEARCH NEW COMPLAINT HELP DOWNLOAD
 In-Process Complaints Completed Complaints Served Complaints

[« Back to Complaints](#)

User Form
 Admin Comments
 Serve Review
 Serve Process
 File Attachments
 Letters
 Show All
 Sub Complaints(0)
 Print Form
 Email Factsheet(s)

Form 2000C (Disability Access Complaint) : 11-C00296043-1

USER FORM

[Consumer Party History](#) [Consumer History](#) [Form History](#) [Edit Form](#)

User Complaint Number: 11-C00296043

User Complaint Key: 11-C00296043-1

Complaint Source: Web

Added User: Consumer

Submission date: 04/07/2011

CONSUMER'S INFORMATION

First Name: stephen

Last Name: conner

Company Name:
 (Complete only if you are filing this complaint on behalf of a company or an organization.)

PO Box:

Address1: 306 grandview drive

Address2: 306 Gradview Drive

City: Old Hickory State: TN

Zip Code: 37138

Telephone Number(Residential or Business): (615) 773 -7369 Ext:

E-mail Address: tigersharkdude@yahoo.com

Are you filing information on behalf of another party, such as client, parent, spouse or roommate? No
 If yes, complete items a through h.

Your relationship with the party:

The party's first name:

The party's last name:

The party's daytime phone number: () - Ext:

The party's street address or post office box number: 306 Gradview Drive

City: Old Hickory State: Zip Code: 37138

E-mail Address:

Fax Number: () -

IMPORTANT: Please indicate the preferred format or method of response to the complaint by the Commission and defendant:

- Letter Facsimile (fax) Telephone Voice
 TRS (designate form of TRS and appropriate contact information)
 TTY Internet E-mail ASCII Text Audio-Cassette Recording Braille

FORM 2000C:

- Check the appropriate box for your type of complaint:
 - Telecommunications Relay Service (TRS) (i.e., TTY-based, IP Relay, CapTel, IP CapTel, Speech-to-Speech, Video Relay Service (VRS))
 - Accessibility of emergency information on television
 - Closed Captioning
 - Wireless telephone equipment or service (includes hearing aid compatibility and other accessibility issues)
 - Wire line telephone equipment or service (includes hearing aid compatibility and other accessibility issues)
- Provide the name, address and telephone number (if known) of the company(s) involved in your complaint:
 - Name: WSMV Nashville
 - City: nashville State: TN Zip Code: 37209
 - Telephone number: (615) 353- 4444
- If your complaint is about accessibility of telecommunications services or equipment, provide the make and model number of the equipment or device that this complaint is about:
- If your complaint is about closed captioning or emergency information on television, provide the date (mm/dd/yyyy) 04/07/2011 Time: 06:15 PM and any details of when the event or action you are complaining

about occurred: **The closed captioning tends to cut off when there is a story that is not being filmed at the building**

5. If your complaint is about access to emergency information on television, provide the following information:
 - a. Television station call sign and network name (if applicable), or channel name (e.g., "WZUF, CBC," "WZUE-TV," "Sportingchannel West"):
 - b. Channel (e.g., "13"):
 - c. Station or subscription TV provider system location:
City: County: State: **TN**
 - d. Date(s) and time(s) of emergency: and time
 - e. Detailed description of the emergency (i.e., flood, hurricane, tornado, etc., as well as the areas in which the emergency occurred):
6. If your complaint is about closed captioning, provide the following:
 - a. Television station call sign and network name (if applicable), or channel name (e.g., "WZUF, CBC," "WZUE-TV," "Sportingchannel West"): **Old Hickory**
 - b. Channel (e.g., "13"): **4**
 - c. Station or subscription TV provider system location:
City: **Old Hickory** County: **Wilson** State: **TN**
 - d. If you pay to receive television programming, type of subscription service (e.g., cable, satellite): **Old Hickory**
 - e. If you pay to receive television programming, name of company to whom you subscribe: **comcast**
 - f. Name of program(s) involved: **37138**
7. Briefly describe your complaint and include the resolution you are seeking. If applicable, provide a full description of the telecommunications equipment or customer premises equipment (CPE) and/or the telecommunications service about which the complaint is made, and the date or dates on which the complaint either purchased, acquired or used, or attempted to purchase, acquire or use the telecommunications equipment, CPE or telecommunications service about which the complaint is being made. **As stated above, the closed captioning on the News tends to cut out when ever there is a story that is not being filmed at the news desk**



Doreen Wade
Vice President, General Manager
615-353-2210
Fax 615-353-2376
doreen.wade@meredith.com

July 21, 2011

In Reply to:

Mr. Stephen Conner
306 Grandview Drive
Old Hickory, TN 37138

Re: 11-C-00296043 (SK); WSMV-TV (Conner); Notice of Informal Complaint

Dear Mr. Conner:

The Federal Communications Commission forwarded to us your complaint concerning closed captioning. Mr. Conner, please know that we take all viewer complaints very seriously and, as a result, are conducting a thorough review of the broadcast in question. We will respond to the FCC and to you no later than Wednesday, August 17, 2011.

Thank you for your interest in WSMV-TV.

Sincerely,

A handwritten signature in black ink that reads "Doreen Wade" followed by a small flourish.

Doreen Wade
Vice President & General Manager



Kevin P. Latek
D 202.776.2594 E klatek@dowlohn.com

August 10, 2011

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, DC 20554

Re: WSMV-TV, Nashville, Tennessee
Facility Identification Number 41232
FCC File Number 11-C00296043-SK; WSMV-TV (Connor)
Response to Notice of Informal Complaint

Dear Ms. Kimmel:

On behalf of Meredith Corporation ("Meredith"), the licensee of WSMV-TV, Nashville, Tennessee, we hereby submit Meredith's response to a July 18, 2011 letter from the Commission's Consumer & Governmental Affairs Bureau (the "Letter"). The Letter forwarded a complaint from Mr. Stephen Conner of Old Hickory, Tennessee, who complained about WSMV-TV's evening news programming on April 7, 2011.

Given the importance with which Meredith takes its responsibilities to serve local communities, Meredith commenced a thorough investigation. Meredith is pleased to be able to respond to the Commission and to send a copy of its response directly to Mr. Conner today.

If you have any questions about the attached response, please contact me directly.

Respectfully submitted,

Kevin P. Latek

Attachment

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

WORKING WITH YOU

WSMV-TV WSMV-DT NASHVILLE



August 10, 2011

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

Re: WSMV-TV, Nashville, Tennessee
Facility Identification Number 41232
FCC File Number 11-C00296043-SK; WSMV-TV (Connor)
Response to Notice of Informal Complaint

Dear Ms. Kimmel:

Meredith Corporation ("Meredith"), licensee of WSMV-TV, Nashville, Tennessee (the "Station"), recently received from the Federal Communications Commission's Consumer & Governmental Affairs Bureau a letter dated July 18, 2011, attaching a complaint to the FCC from Mr. Stephen Conner of Old Hickory, Tennessee, regarding WSMV-TV's evening news programming on April 7, 2011 ("Conner Complaint"). WSMV-TV is the local NBC affiliate for the Nashville market.

In his complaint, Mr. Conner expressed concern about the quality of the closed captioning WSMV-TV provided. Specifically, Mr. Conner stated that he "the closed captioning tends to cut off when there is a story that is not being filmed at the building." In an e-mail to station staff, Mr. Conner stated that "anything that is directly from the office doesn't have closed caption[ing]."¹

Meredith takes very seriously all viewer comments and concerns. Accordingly, we commenced a thorough investigation of our television station's broadcasts at the time in question and of our standard practices and procedures. As explained in more detail below, we believe that WSMV-TV has met and, in fact, exceeded its obligations regarding the provision of closed captioning. Nevertheless, we take Mr. Conner's concerns to heart and are exploring ways to provide even better service to every viewer and listener in the future.

Closed Captioning During WSMV-TV News Programming

The Commission does not require WSMV-TV to provide live captioning of its newscasts or breaking news coverage. Instead, the Commission's rules allow stations outside the Top 25 markets, like WSMV-TV, to utilize the electronic newsroom

¹ Mr. Conner's e-mail correspondence is attached as Exhibit A.

Ms. Susan L. Kimmel
August 10, 2011
Page 2 of 3

technique in lieu of live captioning.² The electronic newsroom technique ("ENT") captioning system simultaneously feeds the teleprompter for the anchors and generates closed captioning for the audience. As the Commission has recognized, however, this system does not generate captioning for non-scripted elements of broadcasts.³

ENT balances the needs of hearing impaired viewers against the economics of running a local newscast. While non-scripted elements of a newscast, such as ad-libbing, field reports, and live interviews are not captioned, ENT ensures that the scripted core segments of a newscast are captioned without imposing on smaller television stations the expense of providing real-time captioning.

The FCC declined to require real-time captioning of news programming for stations outside of the Top 25 markets because of limited real-time captioning resources and high costs for stations in smaller markets.⁴ An extremely costly requirement that television stations without major network affiliations provide real-time captioning for every instance of news and information would threaten these stations' very ability to provide local news and information.

Even though it is permitted to rely on the ENT technique to caption all of its news programming, WSMV-TV nevertheless provides real-time captioning of its evening news programming. Specifically, WSMV-TV provides live captioning of the following weekday newscasts:

- 4 p.m. – 5 p.m.
- 5 p.m. – 5:30 p.m.
- 6 p.m. – 7 p.m.
- 10 p.m. – 10:35 p.m.

After it received word from Mr. Conner that he would be filing a complaint regarding the Station's April 7, 2011, evening newscast, Station staff asked Mr. Conner for further information about the problem he encountered, and in response he stated that the problem "occurs every newscast" when "the camera is not pointed at the news desk."⁵ Meredith reviewed a recording of that program and confirmed that the accurate real-time closed captioning accompanied the entire broadcast, including segments not filmed at the news

² Closed Captioning and Video Description of Video Programming, *Order on Reconsideration*, 13 FCC Red 19973, ¶ 37 (1998); 47 C.F.R. § 79.1(e)(3). Nielsen has assigned WSMV-TV to the Nashville Designated Market Area, ranked number 29. The station thus qualifies to use the electronic newsroom technique.

³ Reminder to Video Programming Distributors of Obligation to Make Emergency Information Accessible to Persons with Hearing or Visual Disabilities, *Public Notice*, 20 FCC Red 5918 (2005).

⁴ Closed Captioning and Video Description of Video Programming, *Second Report and Order*, 15 FCC Red 6615, ¶ 11 (2000).

⁵ See Exhibit A, Conner e-mail.

Ms. Susan L. Kimmel
August 10, 2011
Page 3 of 3

desk. Meredith was unable to identify any captioning deficiencies in the broadcast Mr. Conner identified.

Although it provides real-time captioning of its evening newscasts, Meredith relies on the electronic newsroom technique to provide captioning for WSMV-TV's other news programming.⁶ As discussed above, Meredith confirmed that the program Mr. Conner identified contained full and accurate real-time captioning. Mr. Conner's complaint may have arisen from the station's permitted use of electronic newsroom technique during its other news programming. Indeed, the complaint appears to concern unscripted elements of the station's news programming, namely segments featuring reporters at remote locations. If Mr. Conner watched news programming on the Station that used ENT captioning, he may have noticed that many live field reports do not include captioning because they were not scripted in advance. WSMV-TV simply cannot pre-script all remote news segments. As a result, these segments do not appear with ENT captioning, but this result is fully consistent with FCC rules.

Conclusion

Meredith believes that WSMV-TV provides local viewers with closed captioning of its news programming that fulfills its obligations under the FCC's rules. Nevertheless, as a result of Mr. Conner's feedback – and as it does in response to any viewer complaint – Meredith reviewed and reevaluated its internal policies and procedures for closed captioning. Even though the Commission's rules do not require real-time captioning, we are committed to continue providing live captioning of WSMV-TV's evening news programming to provide the best service to members of our local community. Moreover, Meredith currently is investigating the possibility of providing real-time closed captioning of other news broadcasts.

Meredith takes great pride in serving Nashville and continually reassesses its service to the community. If you have any further questions or concerns, please do not hesitate to contact us or our counsel.

Respectfully submitted,



Doreen Wade
Vice President and General Manager
WSMV-TV

⁶ WSMV-TV provides news programming from 4 a.m. - 7 a.m., noon - 12:30 p.m., 4 p.m. - 5:30 p.m., 6 p.m. - 7 p.m., and 10 p.m. - 10:35 p.m.

Exhibit A

Stephen Conner E-mail

Wendy Reed

From: Brad C. [tigersharkdude@yahoo.com]
Sent: Friday, April 08, 2011 10:19 AM
To: Wendy Reed
Subject: RE: Close Caption

The problem occurs only during news broadcasts. Everything else is fine. It occurs every newscast, mainly when the camera is not pointed at the news desk. I have Comcast digital cable

Wendy Reed <Wendy.Reed@wsmv.com> wrote:

>Mr. Conner
>
>I sincerely apologize for any inconvenience. WSMV does provide closed captioning on all programming, and I have confirmed that our stream was captioned during the 6pm newscast. Could you please assist me in troubleshooting the issue by providing time of day or other programs that you have observed the absence of captioning? Also, are you receiving our signal via over-the-air, Comcast, or satellite, and who is your provider. Do you receive captions on the other local channels?
>
>I assure you that we will make every attempt to resolve the issue.
>
>Thank you for your email and for watching WSMV.
>
>Wendy Reed
>E-mail: WReed@wsmv.com
>
>
>-----Original Message-----
>From: Donna Sexton
>Sent: Friday, April 08, 2011 8:17 AM
>To: Wendy Reed; Doug Smith
>Subject: FW: Close Caption
>
>
>-----Original Message-----
>From: tigersharkdude@yahoo.com [mailto:tigersharkdude@yahoo.com]
>Sent: Thursday, April 07, 2011 6:26 PM
>To: Donna Sexton; Scott Sutton; Angie Martin
>Subject: Close Caption
>
>
>
>NAME:
> stephen conner
>
>EMAIL ADDRESS:
> tigersharkdude@yahoo.com
>
>CITY STATE:
> old hickory, tn
>
>PHONE NUMBER:

> 615-525-3756

>

>PROGRAM WATCHING:

> 6pm News

>

>TIME WATCHING:

> 6:15

>

>SUBJECT:

> Just letting you know that I am reporting WSMV to the FCC for the
>horrible closed captioning. Its very aggravating when you are deaf and
>there is something you want to see BUT for some odd reason news
>stations dont have to abide by the law. Did you know that any public
>broadcast channel is required to have CC? Evidently not, as seeing how
>anything that is directly from the office doesnt have closed caption. I
>bet if you were deaf, this would be fixed ASAP ^^^^^^^^^^^^^ {ts
>'2011-04-07 18:25:39'} ^^^^^^^^^^^^^

>
>This electronic message, including any attachments, may contain proprietary, confidential or
privileged information for the sole use of the intended recipient(s). You are hereby notified
that any unauthorized disclosure, copying, distribution, or use of this message is
prohibited. If you have received this message in error, please immediately notify the sender
by reply e-mail and delete it.

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