



August 1, 2014

1600 WELLS FARGO CAPITOL CENTER  
150 FAYETTEVILLE STREET  
RALEIGH, NC 27601

T 919.839.0300  
F 919.839.0304  
WWW.BROOKSPIERCE.COM

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 Complaints  
FCC Nos. 14-C00574251-1 (Nakamoto), 14-C00574030-1 (Stasium), and  
14-C00573823-1 (Mizusawa)

Dear Ms. Kimmel:

This firm is counsel to Hearst Stations Inc., licensee of Television Station KITV(TV), Honolulu, Hawaii ("KITV").

This letter responds in a consolidated fashion to the informal complaints submitted to the Federal Communications Commission ("FCC") by Ms. Carol Nakamoto, Ms. Sara Stasium, and Ms. Cheryl Mizusawa, 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. These complaints have been assigned Case Numbers 14-C00574251-1 (Nakamoto), 14-C00574030-1 (Stasium), and 14-C00573823-1 (Mizusawa), respectively, by your office (collectively, the "Complaints").<sup>1</sup>

The three Complaints allege that KITV's failure to use closed captioning at certain, specific times on April 1 and 2 prevented viewers from obtaining emergency information relating to a tsunami situation stemming from an earthquake off the coast of Chile. The Complaints variously identify 12:00 a.m. on April 2 (Nakamoto Complaint), midnight on April 1 (Stasium Complaint), and 4:05 p.m. & 9:47 p.m. on April 1 (Mizusawa Complaint) as the times at which viewers were unable to receive emergency information via closed captioning on KITV. Although the times in the Complaints do not correspond to times at which KITV aired newscasts on April 1 and 2, KITV has reviewed a series of newscasts from April 1 and 2, 2014, in which

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<sup>1</sup> KITV first received notice of the Complaints by "CC" of a Notice of Complaint directed to Oceanic Time Warner dated April 21, 2014, from the Consumer & Governmental Affairs Bureau's Disability Rights Office. On July 26, KITV received an email from Sherita Kennedy inquiring into the status of a response. Undersigned counsel communicated with Ms. Kennedy on July 26 and learned, for the first time, that the Complaints had been redirected to KITV by Official Notice of Informal Complaint dated June 24, 2014. By email dated July 28, 2014, you graciously extended KITV's time for response through and including August 11, 2014; thus, this response is timely filed. KITV regrets that this response was not filed sooner so that its viewers would have sooner had their concerns addressed.

the Chilean earthquake/tsunami situation was addressed.<sup>2</sup> Specifically, in KITV's 5 p.m., 6 p.m., and 10 p.m. newscasts on April 1, and KITV's 5 a.m. and 6 a.m. newscasts on April 2, the station discussed the Chilean earthquake and the non-emergency effects predicted for the Hawaiian Islands.<sup>3</sup>

The discussion on KITV of the Chilean earthquake/tsunami situation centered around the fact that only an "advisory" had been issued by NOAA and that no substantial threat to the Hawaiian Islands was anticipated. On multiple occasions during regularly scheduled newscasts, KITV aired graphics that showed that it would take several hours for any effects of the Chilean earthquake to manifest in Hawaii and that explained the principal features of a tsunami "advisory." KITV respectfully submits that at no time did this information rise to the level of a "current emergency," as contemplated by the Commission's Emergency Access Rule in 47 C.F.R. § 79.2, because the minimal effects predicted for Hawaii were neither severe nor imminent.

Because KITV is licensed to Honolulu, Hawaii, which is located in the 69<sup>th</sup> largest DMA<sup>4</sup> the station routinely relies—and relied on April 1 and 2—on electronic newsroom technique ("ENT") captioning to meet its closed captioning obligations for locally produced live programming, 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 became effective after the date of KITV's April 1/April 2 coverage of the Chilean earthquake, and KITV has made appropriate adjustments to its newscasts and coverage of live, unscripted events to meet the new requirements that became effective on June 30, 2014. In addition, for

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<sup>2</sup> Because the newscasts do not correspond to the times identified in the Complaints, recordings of the newscasts have not been included with this response. Should the Commission Staff wish to review all or part of the five hours of newscasts, KITV will provide recordings upon request.

<sup>3</sup> In addition, the station aired crawls at various times on April 1 and April 2 containing related information. An example of one such crawl aired at approximately 4:58 a.m. on April 2 and included the following statements: "HAWAII UNDER TSUNAMI ADVISORY OVERNIGHT, BUT NO MAJOR RISK. . . THE WAVES WILL NOT BE BIG ENOUGH TO CAUSE ANY FLOODING, SO NOBODY NEEDS TO EVACUATE . . . TSUNAMI ADVISORY ONLY AFFECTS HAWAII AND THERE IS NO MAJOR RISK OTHER THAN STRONG OCEAN CURRENTS . . ." This crawl, and others like it, described the non-emergency nature of the conditions.

<sup>4</sup> The 2013-2014 DMA rankings are available at the following URL address: <http://www.nielsen.com/content/dam/corporate/us/en/docs/solutions/measurement/television/2013-2014-DMA-Ranks.pdf>.



several years KITV has had an agreement with an outside vendor for the provision of live, real-time closed captioning during coverage of emergency conditions. Because the tsunami threat was merely an advisory and the minimal, incremental effects of the earthquake were several hours away, KITV evaluated the situation as one that was not an emergency.<sup>5</sup>

KITV's decision to treat the tsunami advisory as non-emergency information is consistent with Commission precedent, and KITV is not aware of any published Commission decision involving the emergency access rule that did not involve circumstances and conditions that presented an imminent and direct threat to public safety in a station's viewing area.<sup>6</sup>

For example, in the *Hurricane Charley Case*, the Commission described the emergency as follows: "On August 13, 2004, Hurricane Charley hit Florida's western coast between Fort Myers and Punta Gorda causing deaths, injuries, and extensive damage to property and natural resources in Florida. A Category 4 Hurricane, Hurricane Charley came ashore with winds of 145 miles per hour, later reaching 180 miles per hour and causing ten foot waves. Hurricane Charley is reported to have been the most powerful storm to hit the Fort Myers area since 1960." *Hurricane Charley Case*, ¶¶ 7-8. The critical details about this 50-year storm event that were provided aurally but not visually involved "evacuation orders, up-to-date information on the path of the storm, anticipated times the storm would hit particular communities, and road and bridge closures. The stations' personnel characterized the storm as a very serious threat to life and property in southwest Florida." *Id.* ¶ 14.

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<sup>5</sup> Although KITV did not know it at the time, other television stations covering the same situation similarly evaluated the situation as a non-emergency, as discussed in their corresponding responses to the Complaints. *See, e.g.*, Responses of KHON-TV, dated July 23, 2014, available at <[https://stations.fcc.gov/station-profile/khon-tv/more-public-files/browse-%3efcc\\_investigations\\_or\\_complaints%3E](https://stations.fcc.gov/station-profile/khon-tv/more-public-files/browse-%3efcc_investigations_or_complaints%3E)>; Response of KFVE, dated July 24, 2014, available at <[https://stations.fcc.gov/collect/files/36917/FCC%20investigations%20or%20complaints/KFVE%20Response%20to%20%20Notice%20of%20Informal%20Complaint\\_Redacted%20\(14064327521473\).pdf](https://stations.fcc.gov/collect/files/36917/FCC%20investigations%20or%20complaints/KFVE%20Response%20to%20%20Notice%20of%20Informal%20Complaint_Redacted%20(14064327521473).pdf)>.

<sup>6</sup> *See Waterman Broadcasting Corp. of Florida, Inc., Montclair Communications, Inc.*, Notice of Apparent Liability, 20 FCC Rcd 13534 (2005) ("*Hurricane Charley Case*"); *ACC Licensee, Inc. Licensee of WJLA-TV*, Notice of Apparent Liability, 20 FCC Rcd 9832 (2005) ("*WJLA-TV*"); *NBC Telemundo License Co. Licensee of WRC-TV*, Notice of Apparent Liability, 20 FCC Rcd 9839 (2005) ("*WRC-TV*"); *Fox Television Stations, Inc. Licensee of WTTG(TV)*, 20 FCC Rcd 9847 (2005) ("*WTTG*") (*WJLA-TV*, *WRC-TV*, and *WTTG* referred to herein collectively as the "*Washington Tornado Cases*"); *Midwest Television, Inc. Licensee of KFMB-TV*, Notice of Apparent Liability, 20 FCC Rcd 3959 (2005) ("*KFMB-TV*"); *Channel 51 of San Diego, Inc. Licensee of KUSI-TV*, Notice of Apparent Liability, 20 FCC Rcd 3969 (2005) ("*KUSI-TV*"); *McGraw-Hill Broadcasting Company, Inc. Licensee of KGTV*, Notice of Apparent Liability, 20 FCC Rcd 3981 (2005) ("*KGTV*") (*KFMB-TV*, *KUSI-TV*, and *KGTV* referred to herein collectively as the "*Wildfire Cases*").

Similarly, the *Washington Tornado Cases* involved a severe storm that was directly affecting the viewing area of the television stations providing coverage. See *WJLA-TV*, ¶ 6; *WRC-TV*, ¶ 6; *WTTG*, ¶ 6. In *WJLA-TV*, an anchor had advised viewers “to take cover in their homes, go to the basement or an interior room, and cover themselves with blankets and quilts.” *WJLA-TV*, ¶ 8. Similarly, in *WRC-TV*, “to get away from their windows, and go to an interior room, such as a bathroom or closet” and to “get away from windows and go to a bathroom or basement when they observe high winds.” *WRC-TV*, ¶ 8. Finally, in *WTTG*, the anchor told viewers to “take cover, go to the lowest level of their house, and stay close to the floor.” *WTTG*, ¶ 8. In each of the *Washington Tornado Cases*, then, the “critical information” about the emergency that was not provided visually was an “action item” of great immediacy where the station told viewers to take certain actions in order to directly protect their health and safety in the face of a tornado potentially touching down in their area.

Finally, in each of the *Wildfire Cases*, the Commission described the emergency event as follows: “During the week beginning October 26, 2003, there were wildfires throughout Southern California, including the San Diego area. These wildfires caused loss of life, injuries, and extensive damage to property and natural resources. Due to high winds, these fires spread extremely rapidly, and caused the evacuation of many of San Diego’s residents.” *KFMB-TV*, ¶ 3; *KUSI-TV*, ¶ 3; *KGTV*, ¶ 3. In each of the *Wildfire Cases*, the emergency information broadcast by the television stations included critical details related to evacuations in specific areas, specific road closures, location of evacuation centers and shelters and certain specific “action items” that viewers were advised to take to protect their health, which was otherwise at risk due to the quality of the ambient air, which was severely compromised as a result of the burning wildfires and wind. See *KFMB-TV*, Appendix A; *KUSI-TV*, Appendix A; *KGTV*, Appendix A.

At least two factors distinguish the *Hurricane Charley Case*, the *Washington Tornado Cases*, and the *Wildfire Cases* from the April 1/April 2 coverage provided by KITV. First, the *Hurricane Charley Case*, the *Washington Tornado Cases*, and the *Wildfire Cases* involved deadly and destructive events (a severe hurricane, rapidly moving tornados, and wildfires) that were spreading rapidly and causing authorities at the time of the broadcasts to evacuate various areas or provide specific direction about taking shelter in each of the station’s viewing areas. In contrast, the Chilean earthquake represented no imminent harm to, caused no destruction in, and threatened no lives in KITV’s viewing area.<sup>7</sup> Only a short-lived tsunami advisory was issued, but even when initially issued it was for an event that was some thirteen hours in the future, i.e., if a wave of any significance were to reach the Hawaiian Islands (and, to reiterate, no significant waves were predicted to reach the Hawaiian Islands), it was scheduled to occur thirteen hours after the advisory went into effect.

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<sup>7</sup> Obviously, the Chilean earthquake was a devastating, catastrophic event in Chile, and KITV is not suggesting otherwise or minimizing the severity of its local impact in Chile. KITV means only to address the (lack of) effects that it had in the KITV viewing area.



Susan L. Kimmel, Deputy Chief

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While KITV's coverage of the Chilean earthquake and temporary tsunami advisory provided an important public service, the event simply did not rise to the level of being a widespread emergency of a magnitude commensurate with the *Wildfire Cases*, the *Hurricane Charley Case*, or the *Washington Tornado Cases*. In other words, KITV's coverage was not coverage of an emergency event or condition that implicated the access requirements of Section 79.2.

Notwithstanding the fact that coverage of the April 1/April 2 conditions did not involve the presentation of emergency information, KITV, with the benefit of hindsight, understands viewers may be alarmed by circumstances that are neither imminent nor hazardous. Accordingly, in addition to the ENT enhancements that KITV has already implemented in light of the June 30 enhanced ENT requirements, KITV is committed to closely evaluating the circumstances in which it calls for live, real-time closed captioning services, even when the situation or conditions may not be of an urgent, emergency nature.

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 Hearst Stations Inc.

Enclosures

cc: Sherita Kennedy, FCC (via email)  
Susan Kimmel, FCC (via email)  
Ms. Carol Nakamoto, via email (honolulu777@yahoo.com)  
Ms. Sara Stasium, via email (sara@pixeljunk.net)  
Ms. Cheryl Mizusawa, via email (damizu@me.com)

### **CERTIFICATION OF LICENSEE**

I, Andrew C. Jackson, 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 KITV and President of the KITV Division of Hearst Stations Inc., licensee of KITV, Honolulu, Hawaii ("KITV"). I have held these positions at all relevant times.

2. My signature below indicates, under penalty of perjury, that I have reviewed the Complaints, and I am familiar with their contents, I have reviewed the foregoing correspondence from Stephen Hartzell in response to the Complaints, and, to the best of my knowledge, information, and belief, I hereby verify the truth and accuracy of the 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 his personal knowledge.

This, the 1st day of August, 2014.

By:



Andrew C. Jackson  
General Manager of KITV  
President of KITV Division of Hearst Stations Inc.