

September 11, 2013

VIA HAND DELIVERY AND EMAIL

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

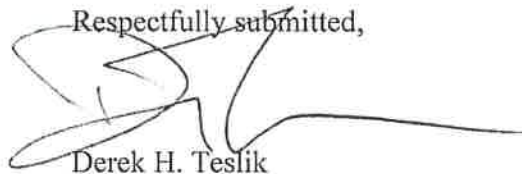
Re: WKTV(TV), Utica, New York
Facility Identification Number 60654
FCC File Number 13-C00511378 (SK) (Meczes) (WKTV-TV and Time
Warner Cable)
Response to Notice of Informal Complaint

Dear Ms. Kimmel:

On behalf of Smith Media License Holdings, LLC (“Smith”), the FCC licensee of WKTV(TV), Utica, New York, we hereby submit Smith’s response to an August 5, 2013, letter from the Commission’s Consumer & Governmental Affairs Bureau (the “Letter”).¹ The Letter forwarded a complaint from Ms. Sylvia Meczes of Herkimer, New York, who complained about coverage of a flood in the local area that occurred on the morning of June 28, 2013.

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

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

Respectfully submitted,

Derek H. Teslik

Attachment

cc: Ms. Sherita Kennedy (via e-mail)
Ms. Sylvia Meczes

¹ We are submitting this response on September 11, 2013, pursuant to the extension of time granted by e-mail dated August 28, 2013 from Sherita Kennedy to Henry H. Wendel.



September 11, 2013

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

Re: WKTU(TV), Utica, New York
Facility Identification Number 60654
FCC File Number 13-C00511378 (SK) (Meczes) (WKTU-TV and Time
Warner Cable)
Response to Notice of Informal Complaint

Dear Ms. Kimmel:

Smith Media License Holdings, LLC ("Smith"), licensee of WKTU(TV), Utica, New York, recently received from the Federal Communications Commission's Consumer & Governmental Affairs Bureau a letter dated August 5, 2013, attaching a complaint to the FCC from Ms. Sylvia Meczes of Herkimer, New York regarding WKTU(TV)'s newscasts on June 28 and July 14, 2013, which covered weather conditions in late June and early July 2013.¹

The Notice included a request for recordings of the identified newscasts.² Due to a lack of financial resources for WKTU(TV), which operates in the 172nd-ranked market in the country, Smith is only able to retain recordings of the local news aired on the station's signal, including the newscasts at issue, for a matter of days. Smith received this complaint several weeks after it broadcast the relevant newscasts, and it was no longer in possession of a recording of the newscasts identified by Ms. Meczes. Thus, Smith is unable to provide the requested recordings.

Smith 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. As explained in more detail below, we believe that WKTU(TV) provided timely and accurate information about the flood to all viewers, including those with hearing disabilities, and

¹ *Notice of Informal Complaint*, from Susan L. Kimmel, Deputy Chief, Disability Rights Office, Consumer & Governmental Affairs Bureau, Federal Communications Commission, to WKTU(TV) and Time Warner Cable, File No. 13-C00411378 at 3 (Aug. 5, 2013) (the "Notice"). Specifically, Ms. Meczes's complaint expressed concern about the alleged absence of any captioning of live newscasts following the flooding.

² *Notice* at 1.

WKTV(TV) complied with the Commission's captioning rules. Nevertheless, we took Ms. Meczes' concerns to heart and made changes to our programming practice to provide even better coverage for every viewer and listener in the future.

I. Coverage of the Aftermath of a Recent Flood Does Not Qualify as an Emergency Under the Commission's Emergency Programming Rule

Section 79.2 of the Commission's rules only applies to "current emergencies."³ In particular, video programming distributors, such as WKTV(TV), must make "emergency information" accessible to viewers with hearing and visual disabilities.⁴ Section 79.2 of the Commission's rules defines "emergency information" as follows:

Information, about a *current emergency*, that is intended to further the protection of life, health, safety, and property, i.e., critical details regarding the emergency and how to respond to the emergency.⁵

The Commission's enforcement actions in this area all have involved emergencies occurring concurrently with the broadcast. In past cases, the Commission has sanctioned broadcasters who failed to provide visual and auditory information regarding live, ongoing emergencies. In each of those cases, the emergency was occurring at the moment of the broadcast or there was an imminent threat of an emergency that initiated a severe weather watch from the National Weather Service.⁶ Smith is unaware of any case where the Commission has sanctioned a broadcaster for failing to comply with the Emergency Programming Rule when the emergency had already taken place. In short, if a station is not providing information about a *current* emergency, the Emergency Programming Rule does not apply.

II. WKTV(TV)'s Flood Coverage During the 6 P.M. Newscast on June 28 and July 14, 2013 Did Not Broadcast Information About a Current Emergency.

The newscasts identified by Ms. Meczes did not violate the Emergency Programming Rule because the six o'clock newscasts on June 28 and July 14, 2013 did not include coverage of a current emergency. While flooding occurred in the Utica area on the morning of June 28,

³ 47 C.F.R. § 79.2 (the "Emergency Programming Rule").

⁴ 47 C.F.R. § 79.2(b).

⁵ *Id.* § 79.2(b)(2) (emphasis added).

⁶ *In re ACC Licensee, Inc.*, 20 FCC Rcd 9832 (EB 2005) (licensee failed to provide descriptions during an active thunderstorm/tornado watch); *In re McGraw-Hill Broadcasting Co.*, 20 FCC Rcd 3981 (EB 2005) (licensee failed to provide descriptions during an active wildfire in the region); *see In re Fox Television Stations, Inc.*, 20 FCC Rcd 9847 (EB 2005) (licensee failed to provide descriptions during an active thunderstorm/tornado watch); *In re NBC Telemundo License Co.*, 20 FCC Rcd 9839 (EB 2005) (licensee failed to provide descriptions during an active thunderstorm/tornado watch); *In re Midwest Television, Inc.*, 20 FCC Rcd 3959 (EB 2005) (licensee failed to provide descriptions during an active wildfire in the region); *In re Fort Myers Broadcasting Co.*, 20 FCC Rcd 2201 (EB 2007) (licensee failed to provide descriptions during a hurricane which had made landfall); *In re Waterman Broadcasting Corp. of Florida, Inc.*, 20 FCC Rcd 13534 (EB 2005) (licensee failed to provide descriptions during a hurricane which had made landfall).

2013, by 6 p.m. the rain had stopped, the flood waters had receded, and government officials were discussing the clean-up efforts.

In the early morning hours of June 28, 2013, severe weather struck the Utica region. Within a few hours, portions of the region were flooded. During that time, WKTV(TV) aired updates relating to the storm and the heavy rains that it brought to the region. This information included crawls that conveyed details about severe weather warnings and identifying the counties that were included in these National Weather Service alerts. The final flood warning for the region on that date was in effect until 10:30 a.m. By that time, the rain had subsided and the waters had begun to recede. WKTV(TV) covered the aftermath of the flood throughout the day, broadcasting footage of impacted areas and the beginning of clean-up efforts by government officials and residents in the area.

WKTV(TV)'s June 28, 2013 newscast did not contain emergency information. By 6 p.m. on June 28, 2013, no active weather watches were in effect for the region. During the six o'clock newscast, the station broadcast stories from around the region discussing the morning's flooding. The newscast provided live coverage of a press conference by government officials providing an update on plans for cleaning the areas impacted by the flood. The officials stated that the area was not back to normal, but they did not present any information relating to a current emergency.

WKTV(TV)'s July 14, 2013 newscast likewise did not contain emergency information. On that date, and the two days prior to and subsequent to that date, there was no severe weather in the region. The station's records indicate that no flooding, or any other emergency, struck the Utica, New York region around that time. Consequently, WKTV(TV) is unaware of any emergency information presented during the July 14, 2013 newscast that Ms. Meczes refers to in her complaint.

III. WKTV(TV)'s Closed Captioning of its News Programming Fully Complies With the Commission's Rules.

Ms. Meczes also alleged that the station "has never provided close [*sic*] captioning during live weather reports." The Commission does not require WKTV(TV) to provide live captioning of its news programming. Instead, the Commission's rules allow stations outside the Top 25 markets, like WKTV(TV), to utilize the electronic newsroom technique in lieu of live captioning.⁷ The electronic newsroom technique captioning system simultaneously feeds the teleprompter for the anchors and generates closed captioning for the audience. As the Commission has recognized, however, this system will not cover non-scripted elements of broadcasts.⁸ The FCC declined to require real-time captioning of news programming for stations

⁷ Closed Captioning and Video Description of Video Programming, *Order on Reconsideration*, 13 FCC Rcd 19973, ¶ 37 (1998); 47 C.F.R. § 79.1(e)(3). Nielsen has assigned WKTV(TV) to the Utica, New York Designated Market Area, ranked number 172. The station thus qualifies to use the electronic newsroom technique.

⁸ Reminder to Video Programming Distributors of Obligation to Make Emergency Information Accessible to Persons with Hearing or Visual Disabilities, *Public Notice*, 20 FCC Rcd 5918 (2005).

outside of the Top 25 markets because of limited real-time captioning resources and high costs for stations in smaller markets.⁹ An extremely costly requirement that television stations in smaller markets provide real-time captioning for every instance of news and information would threaten smaller market stations' very ability to provide local news and information.

The Commission also does not require real-time captioning during live breaking news coverage of a local emergency. Instead, television stations must make the critical details regarding an emergency "accessible."¹⁰ Stations may choose to make such emergency information accessible to persons with hearing disabilities through live captioning or any other presentation in visual format such as scrolls, tickers, or on-screen graphics.¹¹

In general, Smith relies on the electronic newsroom technique to provide captioning for WKTV(TV)'s news programming. Therefore, Smith believes that the allegation that WKTV(TV) "has never provided close captioning during live weather reports" and the concerns in the complaint regarding the flood arise from the station's permitted use of electronic newsroom technique.

During live, unscripted news coverage of a current emergency the Commission's rules require that WKTV(TV) make the critical details regarding a current emergency accessible to viewers. WKTV(TV)'s practice is to do just that. During emergencies, Smith's long-standing practice is to ensure that all critical details provided in the broadcast are made accessible through crawls and other graphical displays of information during each newscast. WKTV(TV) uses extensive on-screen static graphics to convey information to its viewers during its news and special reports.

IV. WKTV(TV)'s Has Enhanced its Practice for Emergency Programming to Exceed the Requirements Set Forth in the Commission's Rules.

Smith believes that its flood coverage fully complied with all Commission rules, including the Emergency Programming Rule. Nevertheless, as a result of Ms. Meczes' feedback – and as it does in response to any viewer complaint – Smith reevaluated its internal policies and procedures for covering local emergencies as well as how Smith actually responded under the pressing circumstances in June. Even though the Commission's rules do not require real-time captioning, Smith is committed to providing the best service possible to all members of its local community. Smith, therefore, has contracted with Caption Advantage to provide live, real-time captions for all future broadcasts that convey emergency information. The real-time captioning

⁹ Closed Captioning and Video Description of Video Programming, *Second Report and Order*, 15 FCC Rcd 6615, ¶ 11 (2000).

¹⁰ 47 C.F.R. § 79.2(b)(1)(i) ("Emergency information that is provided in the audio portion of the programming must be made accessible to persons with hearing disabilities by using a method of closed captioning or by using a method of visual presentation.").

¹¹ Reminder to Video Programming Distributors of Obligation to Make Emergency Information Accessible to Persons with Hearing or Visual Disabilities, *Public Notice*, 21 FCC Rcd 7994 (2006).

Susan L. Kimmel
September 11, 2013
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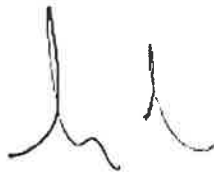
will supplement Smith's existing practice of providing extensive on-screen graphics during breaking news programming.

V. Conclusion

Smith believes that WKTV(TV) fully complied with the Commission's rules concerning the broadcast of emergency information. As discussed above, the broadcasts in question did not contain information regarding a current emergency.

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "S. Doerr". The signature is written in a cursive style with a large initial "S" and a smaller "D".

Steve Doerr
General Manager

cc: Ms. Sherita Kennedy (via e-mail)
Ms. Sylvia Meczes