

November 21, 2014

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**Federal Communications Commission
Bureau / Office**

Via Hand Delivery

Federal Communications Commission
Consumer & Governmental Affairs Bureau
Disability Rights Office
Attn: Susan L. Kimmel, Deputy Chief
445 12th Street SW
Washington, D.C. 20554

Re: Notice of Informal Complaint
FCC File No. 14-C00618181(SK)
KMIZ-TV and Me-TV Network (Spaur)

Dear Ms. Kimmel:

This firm is counsel to NPG of Missouri, LLC, licensee of Television Station KMIZ(TV), Columbia, Missouri ("KMIZ" or the "Station"). This letter responds to the informal Complaint submitted to the Federal Communications Commission ("FCC") by Steven and Carolyn Spaur 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. This Complaint has been assigned File No. 14-C00618181(SK) by your office.

KMIZ received notice of the Spaur's complaint by Notice of Informal Complaint dated October 24, 2014, from the FCC's Consumer & Governmental Affairs Bureau's Disability Rights Office (the "Notice").

The Spaur's Complaint identifies 6:45 p.m. on October 1, 2014, as the time at which the Station allegedly failed to make certain information accessible. Specifically, the Complaint states:

Severe weather they have maps.up. but no. caption.
for.what is being said. No crawler 2nd compliant this year
fornsame.satation this time I've tapped pond my dad. Other 2
local stations are closed caption. Very unacceptable by this
company and stations. It's not the cable provider it's the station.

Following receipt of the Notice, the Station began its investigation to determine whether there were any issues with the presentation of any emergency information on October 1 at the time identified in the Spairs' Complaint. KMIZ's investigation revealed that KMIZ was airing emergency information at the time identified in the Complaint. The Station interprets the gravamen of the Complaint to be about KMIZ's provision of emergency information in visual format, and this letter responds accordingly.

A recording of the tornado warning coverage aired on KMIZ from 6:29 p.m. to 7:00 p.m. local time on October 1, 2014, is posted at the following link on YouTube: http://www.youtube.com/watch?v=_uriTnAAYDU&feature=youtu.be.¹

KMIZ is licensed to Columbia, Missouri, which is located in the Columbia-Jefferson City Designated Market Area ("DMA"). Columbia-Jefferson City is ranked as the 138th DMA by Nielsen.² As such, KMIZ is permitted to, and does, use the electronic newsroom technique for its newscasts, and implemented "enhanced" measures to comply with the new requirements as of June 30, 2014. *See* Declaration of Eric Jones ("Jones Declaration"), ¶ 3; *see also* 47 C.F.R. § 79.1(e)(3).

Although KMIZ is not required to provide closed captioning during its newscasts, the Station had successfully worked with a live captioning service earlier in the day to caption its coverage of storms in the viewing area. *See* Jones Declaration, ¶ 5. Believing the storms to be over, KMIZ's Chief Engineer Eric Jones released the captioner at approximately 6:00 p.m. *See* Jones Declaration, ¶ 5. When another cell of storms arose at roughly 6:29 p.m., Mr. Jones contacted the captioner again and left a message asking for live captioning to come back online to accompany KMIZ's extended weather coverage of the new weather event. *See* Jones Declaration, ¶ 6. However, in spite of Mr. Jones' efforts to secure a captioner, closed captioning was not able to commence until after 7:00 p.m. when the tornado warning expired. *See* Jones Declaration, ¶ 6.

In the absence of captioning, the Station visually provided the critical details of the emergency as summarized below. This response does not provide a minute-by-minute account of the aural and visual emergency information provided by KMIZ. However, the first few minutes of the coverage are described in some detail in order to give a sense of the Station's aural and visual presentation.

As indicated on the time and temperature graphic visible on screen, the video begins with KMIZ's severe weather coverage in progress at 6:29 p.m. local time. At this time, an EAS crawl and aural announcement states that a tornado warning is in effect for Morgan County, Missouri from 6:26 p.m. through 7:11 p.m. Coverage of the tornado warning was initiated shortly before the video begins. The Station routinely records its 6:00 p.m. and 6:30 p.m. newscasts from cable

¹ A DVD containing a recording of the tornado warning coverage in question has not been submitted with this response. By email dated November 7, 2014, FCC Staff advised the undersigned that no DVD would be needed if video of the coverage in question was available on the Internet.

² A list of Nielsen DMA rankings for 2014-15 is available at the following URL address: http://www.tvb.org/media/file/Nielsen_2014-2015_DMA_Ranks.pdf.

and breaks the recording during what is normally a commercial break between newscasts. *See* Jones Declaration, ¶ 4. Due to the routinely scheduled break in the recording, there is no video available of the first minute or so of the EAS message. However, KMIZ has obtained the text of the crawl from its EAS equipment and attached the text to this response. *See* Jones Declaration, Attachment A. The EAS text visually displayed on KMIZ clearly indicates the time, duration, and geographic area of the tornado warning then in effect, as issued by the National Weather Service (“NWS”).

Immediately following the conclusion of the EAS crawl, the recorded EAS message issued by the NWS aurally describes the expected hazards of tornado and hail with expected impacts to property. The NWS message then describes the areas impacted. The EAS message advises viewers to take cover and move to an interior room on the lowest level and avoid windows. Special instructions are given to mobile home residents. Viewers are advised to move to the closest shelter and protect themselves from flying debris.

Meanwhile, during the aural EAS message, the Station’s Doppler radar graphics visually convey detailed information of this weather event. A warning label is on-screen—where it remains through most of the coverage until expiration of the tornado warning at 7:00—clearly indicating in bright red letters that a “tornado warning” is in effect.³ A bright red box (in a reverse L shape) outlining the affected area is also visually displayed. Moreover, immediately following the NWS’s listing of impacted cities, an on-screen arrow and then a circle or spotlight visually calls specific attention to the aurally identified areas (highlighting Cole Camp and surrounding areas on the leading edge of the worst part of the storm). Immediately following the conclusion of the verbal EAS message, KMIZ displays a weather tracker, moving eastward, with the expected time of arrival of the tornado threat in certain listed cities. In the aggregate, these graphics tools effectively communicate visually the emergency information provided aurally.

Following the conclusion of the audio EAS message, at approximately 6:31, a weather anchor comes on screen and points to the area around Cole Camp, the tornado threat area identified aurally by the NWS, and makes a rotating motion with her hands. Along with the bright red mass on the Doppler radar, the weather anchor is visually demonstrating that a tornado has been indicated. A blue arrow then comes on screen, again pointing out the area near Cole Camp. The arrow and the anchor’s hands (again) show a rotating motion, mimicking the rotation of a tornado. The on-air anchor then states that the storm is moving east at 30 to 35 miles an hour. Nearly immediately, the screen displays a weather tracker moving eastward at 35 miles an hour and a list of communities and expected arrival times for the storm. The same information is recited orally as well. Again, using these tools, the emergency information was communicated visually.

At approximately 6:32, the Doppler radar is switched out for a “storm warning” visual that displays in bright red the area under the tornado warning. The anchor mentions storms further to the west that are being tracked—these storms are displayed in a peach color, clearly indicating they are less of a threat than the bright red areas. An on-screen visual displays the

³ Practices and procedures for use of this and similar warning labels were adopted following the Station’s review of its April 27, 2014, tornado warning coverage. *See* Response to Official Notice of Informal Complaint, Television Station KMIZ, Columbia, Missouri, Case No. 14-C00579012-1 (JM). *See* Jones Declaration, ¶ 7.

following text to accompany the anchor's verbal messages: "TORNADO WARNING, UNTIL 7:00 – MORGAN COUNTY." The on-screen text is then updated in real time to reflect new warnings: "TORNADO WARNING, UNTIL 7:00 – PETTIS COUNTY," "TORNADO WARNING, UNTIL 7:00 – BENTON COUNTY." Shortly after the updated warnings, the Doppler screen returns and the anchor again makes a rotating hand motion in the area of the new warning in Pettis County, visually indicating a tornado. The on-screen anchor makes another rotating motion near Cole Camp at approximately 6:33, again visually conveying the tornado indicated there. The area is then highlighted in a map with the tornado warning area in red—with the "TORNADO WARNING" label clearly visible at the top of the screen—and a circle or spotlight is displayed around the area of radar-indicated threat near Cole Creek and Bahner. The Doppler radar then returns at approximately 6:33 and the area of the threat is shown in a circle, with the anchor making rotating hand motions to visually indicate a tornado. Another anchor, who is operating the Doppler machine, states aurally that there is a tornado warning. The screen then cuts to the Doppler radar, with its visual "TORNADO WARNING" label and the areas of concern highlighted in a circle and the broader warning area outlined in red. The Doppler shows severe weather activity in red (with a key at the top showing that red indicates heavy weather activity). When the anchor orally states at approximately 6:34 the area of concern where radar indicates rotation, a blue arrow points out the particular area of concern and makes a circular motion, again visually indicating a tornado. Again, the Station has provided visual representations of the emergency information provided aurally, notwithstanding the fact that the closed captioner had not yet responded to the call from Mr. Jones.

At approximately 6:34, an off-screen anchor states that the tornado warning area is extended into southern portions of Benton County, and the "Storm Warning" map clearly indicates this by showing in red the additional area under warning. A graphic displays "TORNADO WARNING, UNTIL 7:00 – BENTON COUNTY," thereby providing the same emergency information in a visual format.

At approximately 6:35, the anchor zooms out to provide Doppler radar of a broader view of the area. The locations verbally described by the anchor are shown on-screen and outlined in red. At the center of the area, viewers can clearly see red and orange areas (again with a key at the top of the screen that indicates these colors mean heavy weather activity). The "Tornado Warning" label remains at the top of the screen. When the anchor describes the possibility of a tornado 5 miles southwest of Lincoln (at 6:36), the Doppler zooms in and the anchor draws a line 4.7 miles to the southwest of Lincoln, visually displaying the area that the anchor just described as under threat. When taken with the "TORNADO WARNING" label at the top of the screen, viewers know there is a tornado indicated in this particular spot. A circle or spotlight then highlights that area and makes circular motions, effectively communicating the emergency information in the requisite visual format.

From 6:35 onward, KMIZ's coverage is substantially the same as described above. The Station utilized a combination of the following visuals throughout the roughly 30-minute tornado warning coverage from 6:30 to 7:00, which, in the aggregate, communicated substantially all of the emergency information provided aurally, while the Station continued to wait for its closed captioning provider to respond to Mr. Jones' 6:30 phone call seeking captioning:

- Doppler radar maps with bright red and in some cases pink storm areas and a “TORNADO WARNING” label at the top of the screen. A key at the top of the screen shows that red and pink indicate “heavy” storm activity.
- Doppler radar maps that show the locations under the tornado warning outlined in bright red with a “TORNADO WARNING” label at the top of the screen. As a tornado warning in a particular county or counties expires, as stated aurally, the red outline previously showing on the Doppler radar disappears—visually displaying that the warning in that area is over.
- Storm tracker tools in which the weather team electronically draws on the Doppler radar—and the screen displays—the eastward movement of the storm at 30 or 35 miles per hour. The storm tracker then produces a nearly instantaneous list of cities in the track and the projected arrival times of the storm.
- One or more circles or spotlights and/or blue arrows to focus attention on particular areas where Doppler radar has indicated rotation—namely around Cole Creek and Lincoln, as aurally described.
- Anchors in front of the Doppler radar screen or seated behind a desk making circular motions with their hands to indicate a tornado.
- A “Storm Warning” map that shows in red the areas under the tornado warning with text displaying “STORM WARNING” and “TORNADO WARNING, UNTIL 7:00” followed by affected county names.
- When a flash flooding threat is aurally mentioned, KMIZ displays a map labeled “FLASH FLOOD WATCH, 7PM TONIGHT THROUGH 7PM THURS” with the affected locations highlighted in green.
- When a tornado watch is aurally described, KMIZ displays a map labeled “TORNADO WATCH, UNTIL 10 PM” with the affected locations highlighted in yellow.
- When rainfall totals are described, KMIZ displays an on-screen graphic showing 2-plus inches per hour.

The Station alternates back and forth among these different techniques to visually provide the information that the weather team is aurally providing. When particular areas are mentioned, one or more of the techniques described above are utilized to call attention to that particular area. KMIZ’s weather anchors also use a number of visual cues to clearly indicate that a tornado threat is imminent in particular locations: circular hand motions, graphic circles spotlighting an area, blue pointers (sometimes making rotating motions), eastward-moving storm trackers displaying 30 or 35 mile per hour movement and arrival times in named cities. Taken together with the visual backdrops of the Doppler radar obviously showing extreme weather, “TORNADO WARNING” labels, storm warning maps displaying “TORNADO WARNING, UNTIL 7 PM” with county names, the graphic presentation provides the critical details of the emergency in visual form in a materially equivalent way to the details provided aurally.

We believe these facts demonstrate the Station’s substantial compliance with the emergency access rule during the period the Station awaited the re-engagement of its live, real-time closed caption provider, at the times referenced in the Notice and that no further action need be taken with respect to the Complaint.

The signature of the Licensee's officer in the Declaration of Timothy Hannan attached hereto indicates that he has read this letter response and that to the best of his knowledge the information contained in this letter is true and correct. In addition, this Response is supported by the Declaration of Eric Jones.

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.



Elizabeth E. Spainhour
Counsel to NPG of Missouri, LLC

Enclosures

cc: Steven and Carolyn Spaur (via email and First Class U.S. Mail)
Sherita Kennedy, FCC (via email)
Susan L. Kimmel, FCC (via email)

CERTIFICATION OF LICENSEE

I, Timothy Hannan, 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 Vice President of NPG of Missouri, LLC, licensee of KMIZ, Columbia, Missouri. I have held this position at all relevant times.


2. My signature below indicates, under penalty of perjury, that I have reviewed the Notice of Informal Complaint dated October 24, 2014 ("Notice"), and I am familiar with its contents, I have reviewed the foregoing correspondence from Elizabeth Spainhour in response to the Notice, and, to the best of my knowledge, information, and belief, I hereby verify the truth and accuracy of the information contained therein. To the extent that I am or was not personally involved in particular aspects of the station's operations or investigation of the emergency access issue that is the basis of the Notice, I am relying on the statements made in the Declaration of Eric Jones, which I have reviewed and with which I am familiar.

[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 20th day of November, 2014.

By:



Timothy Hannan
Vice President, NPG of Missouri, LLC

DECLARATION OF ERIC JONES

1. My name is Eric Jones. I am over the age of eighteen, and I am competent to testify to the matters set forth in this declaration. Unless and except as specifically stated otherwise, I have personal knowledge of all the facts stated herein. I have reviewed the foregoing correspondence from Elizabeth Spainhour in response to the October 24, 2014, Notice of Informal Complaint ("Notice"), and I hereby verify the truth and accuracy of the information contained therein.

2. I am and have been at all relevant times the Chief Engineer of Television Station KMIZ, Columbia, Missouri ("KMIZ"), which is in the Columbia-Jefferson City DMA. I have reviewed the Notice, and I am familiar with its contents.

3. As a television station in the 138th DMA, KMIZ is permitted to, and does, use electronic newsroom closed captioning during its newscasts, including during its daily newscasts, including the newscasts at 6:00 p.m. and 6:30 p.m., and KMIZ enhanced its ENT captioning as of June 30, 2014. It is my understanding that for stations such as KMIZ that are permitted to routinely use electronic newsroom captioning, the FCC has provided guidance about using crawls and other methods of visual presentation to present emergency information that is provided aurally. It is my understanding that the use of closed captions for a station such as KMIZ is not required for the presentation of emergency information so long as other visual techniques are used. Nonetheless, it is KMIZ's routine practice to secure live closed captioning for severe weather coverage.

4. KMIZ records its 6:00 p.m. and 6:30 p.m. newscasts from cable. The recording for the 6:00 p.m. newscast is set to end at approximately 6:27 during what is normally a commercial break. It takes a moment for the recorder to reset and then begin recording the 6:30 p.m. newscast at approximately 6:29 p.m.

5. October 1, 2014, was an active weather day in mid-Missouri. Prior to KMIZ's weather coverage at issue in the Notice, the Station had provided coverage of earlier severe weather in the KMIZ viewing area. Following our routine protocols, I contacted our closed captioning service and secured live captioning to accompany KMIZ's severe weather coverage earlier in the day on October 1. When the weather event appeared to be over, I called the captioner at approximately 6:00 p.m. local time and released them.

6. Unexpectedly at approximately 6:29 p.m., when KMIZ's 6:00 p.m. newscast was concluding, another weather event in Morgan County, Missouri, arose. I contacted the captioning service to secure live captioning to accompany extended local coverage of this new weather event. I left a message for the captioning service asking them to come online as soon as possible to provide captions for KMIZ. Due to factors beyond the Station's control, captions did not come online until after 7:00 p.m., when the tornado warnings had expired. Nevertheless, as is the Station's practice, the weather team made substantial efforts to implement other tools and techniques to provide a visual display of the most important information that was being provided aurally by on-air anchors. Those tools and techniques can be seen in the recording I uploaded to

the following URL address:
http://www.youtube.com/watch?v=_uriTnAAYDU&feature=youtu.be.

7. Following a Notice of Informal Complaint related to KMIZ's April 27, 2014, tornado coverage, KMIZ instituted practices and procedures to use "warning label" graphics to visually display severe weather warnings. The "TORNADO WARNING" label shown at the top of the Doppler radar graphics is an example of one such label.

[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 20th day of November, 2014.


Eric Jones
Chief Engineer, KMIZ

**ATTACHMENT A
TO DECLARATION OF ERIC JONES**

Eric Jones

From: dasdec_eas@kmiz.com
Sent: Wednesday, October 01, 2014 6:30 PM
To: engineering@kmiz.com
Subject: 'KMIZ-DASDEC-1F EAS' Forwarded TOR EAS alert at 'Wed Oct 1 18:30:28 2014'. Station Name='KMIZ-TV'. ID='KMIZ/TV'.

THE NATIONAL WEATHER SERVICE HAS ISSUED A TORNADO WARNING FOR THE FOLLOWING COUNTIES/AREAS:

Morgan, MO;

AT 6:26 PM

ON OCT 1, 2014

EFFECTIVE UNTIL 7:11 PM.

MESSAGE FROM KLSX/NWS.