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April 27, 2010

MAY - 3 2010

Federal Communications Commission
Bureau / Office

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

RE: Notice Of Informal Complaint
Mary Robinson, Complainant
10-C00207226 (SK)

Attention: Cheryl J. King, Deputy Chief

Dear Ms. King:

On behalf of KBMT License Company, LLC, licensee of television station KBMT (TV), Beaumont, Texas ("KBMT"), this letter responds to the above-referenced Notice of Informal Complaint (NOIC) dated April 2, 2010. The NOIC states that a complaint has been filed against KBMT alleging violation of the Commission's rules governing closed captioning, 47 C.F.R § 79.1. Specifically, the complainant alleges that, on March 2, 2010, KBMT's pass through of the captions contained in the broadcast of the ABC program "Lost" was interrupted.¹ As demonstrated Herein, KBMT experienced a captioning failure during the "Lost" program as a result of "squeeze backs" in the program video² in order to provide viewers with newsworthy information concerning the results of the state's gubernatorial primary.³ As will be shown, the captioning failure was unintended, de minimis and reasonable under the circumstances. See 47 C.F.R. §79.1(e)(10) (2010).

On March 2, 2010, the Texas Republican party held its gubernatorial primary. The contest between two-term Governor Rick Perry and Senator Kay Bailey Hutchison was a high-profile, newsworthy event. Thus, once the polls closed, KBMT initiated the squeeze backs on both ABC and NBC to inform viewers of the election results. During the squeeze backs, the closed captioning of ABC programming airing on Channel 12.1 was

¹ The affected programming consisted of a first run episode and a repeat episode of "Lost," which aired back-to-back from 7:00 PM to 9:00 PM.

² A "squeeze back" refers to the process whereby a station shrinks the video being broadcast in order to add additional information on the screen, such as emergency weather alerts or, as in this case, election results.

³ KBMT broadcasts both ABC and NBC Network programming. ABC airs on the KBMT main digital stream, Channel 12.1. NBC airs on the second digital stream, Channel 12.2.

interrupted. Ms. Robinson states that the lack of closed captioning on March 2 severely compromised her enjoyment of her favorite program.

In addition to submitting her informal complaint via the FCC's electronic complaint system, Ms. Robinson the same night emailed the Chief Operating Officer of the licensee of KBMT, Phillip Hurley. Mr. Hurley forwarded the email the next morning to KBMT where it was reviewed by general manager Dan Robbins and station engineer Mark Cormier. Mr. Robbins responded the following day, explaining that the problem was due to an isolated, brief technical problem. Ms. Robinson responded promptly with an enthusiastic thank you.⁴

The interruption of closed captioning, as noted above, was the result of the squeeze backs used to provide election results. To accomplish the squeeze backs, it was necessary to rewire the outputs of the production switcher. ABC was fed an output of the production board. NBC was fed an output of the ME1 output of the production board. The temporary rewiring affected the closed captioning encoder for the ABC programming stream for about three hours because the encoder was in line with the production board output rather than being on bypass. Closed captioning of NBC programming was not affected. This problem will be fully resolved by April 28, 2010 when the KBMT digital studio conversion is expected to be completed. By the time of the next election, there should be no need to rewire the KBMT production studio in order to initiate squeeze backs to accommodate the posting of election results.

KBMT takes seriously its obligation to provide closed captioning and appreciates viewers like Ms. Robinson. The problem that occurred on March 2 was due to a temporary technical "bridge" that was necessary to transmit election returns on both of KBMT's digital network streams. It should not occur again, since the conversion of the station's digital studio facilities is imminent. Thus, KBMT submits that the portion of programming on the evening of March 2, 2010 that did not include captioning was de minimis and reasonable under the circumstances. See 47 C.F.R. § 79.1(e)(10) (2010).

Respectfully submitted,



Dan Robbins
General Manager

cc: Ms. Mary Robinson
Francine Crawford, FCC (via e-mail)
Sherita Kennedy, FCC (via e-mail)

⁴ A copy of Ms. Robinson's email and Mr. Robbins' response are attached as **Attachment A**. In the email, Ms. Robinson also described and asked for KBMT's help in solving PSIP problems she was having with her HDTV sets. Mr. Robbins invited Ms. Robinson to call his engineer about the PSIP problem, which she did. Mr. Cormier and his staff have worked with Ms. Robinson and spoken to the TV manufacturer and have determined that the problem is with the TV sets and has nothing to do with KBMT.

ATTACHMENT A

Dan J. Robbins

From: Mmrts@aol.com
Sent: Friday, March 05, 2010 1:51 PM
To: Dan J. Robbins
Subject: Re: Loss of CC during election coverage!!!

Hi Mr. Robbins,

I thank you so much for your response to my e-mail. I was quite frustrated the other night when trying to watch LOST. I am very appreciative that this won't happen again in the future.

This had happened once before during an election, and I called and inquired about it the next day and was told that the CC covered up the election results and that is why it was removed from the programming. This made no sense to me, because if the results are needed to be seen, the CC can most certainly be turned off, and most people don't use the CC anyway. But for those of us that do depend on it, it is what makes the difference between being able to watch and understand and being clueless as to what is happening with the plot line.

So, once again, I thank you for looking into this matter for me, and I will actually look forward to the next election.

BTW, when will THIS TV begin airing on MyTX???

Take care, and have a great day.

Mary Robinson
MMRts@aol.com

In a message dated 3/4/2010 8:24:24 A.M. Central Standard Time, d Robbins@kbn12.com writes:

Dear Ms. Robinson,

Thank you for contacting us and we appreciate your feedback. The problem that you are referring to was an isolated technical problem for the three hours which has been corrected. We apologize for any inconvenience this may have caused.

Regarding your questions about KBMT and MYTX, please feel free to contact Mark Cormier who is our Chief Engineer at (409) 833-7512. He will be happy to answer any questions that you have.

Thank you again for contacting us.

Dan Robbins
General Manager

Hi,

My name is Mary Robinson and I live in Groves, Texas. I am a viewer of KBMT channel 12 out of Beaumont.

I tried to watch LOST tonight, but was unable to do so because during the complete 2 hours of LOST programming, KBMT was running graphics of the election results. When this happens, the Closed Captioning is eliminated, rendering the programming unwatchable due to not being able to keep up with the story line.

Lost is my favorite program, and I make it a point to be in front of a TV when it is on, so I was totally disappointed in not being able to enjoy the programming. I called the station several times to inquire when the CC would reappear, and was told for two hours that they were working on it. For a very brief moment, it appeared during programming, but was CC from the previous news break live up-date of the election coverage, so I know it can be done.

In my mind, it is TOTALY UNACCEPTABLE to not have CC during network programming. I am so irritated that I have already sent an e to the FCC concerning this matter. I am really upset about it. Please make sure this never happens again. I can hear, I just can't understand the dialog and need the CC to keep up with the storyline.

So, I guess while I have your ear, I will address another concern that affects me about KBMT.

I have two Sanyo HDTVs. A 32" and a 26". Both TVs are affected by this problem... The TV cannot lock onto two different RF broadcast channels with the same PSIP virtual channel numbers. It will lock onto one or the other. When they encounter two RF broadcast channels with the same PSIP virtual channel, the last one it encounters will overwrite the previous one.

For example: The TVs will recognize RF channel 12 (KBMTs 12.1 and 12.2) when I do a scan. But when the search gets to KUILs channel 43 (MyTX 12.3 and 12.4) it will overwrite the RF channel 12 PSIP and leave only 12.3 and 12.4 on my HDTVs. I lose the ABC and NBC programming, and am only left with the MyTX programming.

If the PSIP for MyTX would read channel MyTX 43, or MyTX 36, or even MyTX 64, I would not have this problem. It is assigning it the virtual channel 12 and coming from a different RF channel that causes the problem.

I got around the problem of losing the ABC and NBC programming by doing a scan and when it locked onto channel 12, I turned off the TV leaving 12.1 and 12.2 in place. But this leaves me without MyTX programming. For if I were to let the TV lock onto the MyTX RF channel again, I will lose the ABC and NBC programming again.

A simple virtual channel change in the PSIP for the MyTX group of stations would solve the problem.

I just thought I would let you know about the virtual channel issue, put it in your hands, and see if you can come up with a way to allow me to enjoy the MyTX programming as well as the ABC and NBC programming. But the virtual channel issue is minor compared to the CC issue. As I stated before, the CC issue is unacceptable.

I look forward to hearing from you and getting your thoughts on these two issues.

Thank you,

Mary Robinson

MMRIs@aol.com

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

Rec'd
4/1/10

OFFICIAL

NOTICE OF INFORMAL COMPLAINT

April 2, 2010

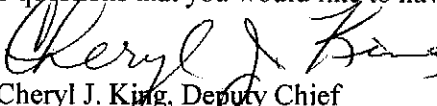
In reply refer to case number: 10-C00207226 (SK)
(Robinson) (KBMT-TV)

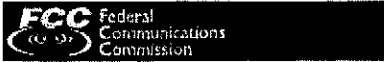
THE COMPANY IDENTIFIED IN THE ATTACHED COMPLAINT IS REQUIRED TO RESPOND TO THIS NOTICE OF INFORMAL COMPLAINT WITHIN 30 DAYS OF THE DATE OF THIS NOTICE. Failure of any person to answer any lawful Commission inquiry is considered a misdemeanor punishable by a fine under Section 409(m) of the Communications 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 complaint was 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 complaint 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.

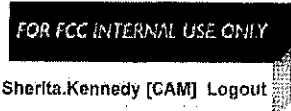
Your response should include: (1) the Complainant's name, and (2) the Case number. For hand deliveries, the Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m., Monday-Friday. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554.

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 Cheryl.King@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 Francine Crawford 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.


Cheryl J. King, Deputy Chief
Disability Rights Office/CGB



10-C 00207226



Admin 2000

Sherita.Kennedy [CAM] Logout

HOME SEARCH NEW COMPLAINT HELP DOWNLOAD
Basic Search Advanced Search

« Back to Complaints

Form 2000F (Other Communications Complaint) :

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

USER FORM

Consumer History Form History Edit Form

User Complaint Number:

User Complaint Key:

Complaint Source: **Web**

Added User: **Consumer**

Submission date: **03/02/2010**

CONSUMER'S INFORMATION:

First Name: **Mary**

Last Name: **Robinson**

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

Street Address or Post Office Box Number:

City: **2120 Orange Acres** State: **TX**

Zip Code: **77619**

Telephone Number(Residential or Business): **(409) 960 -7739** Ext:

E-mail Address: **MMRts@aol.com**

FORM 2000F:

1. Type of company that is the subject of your complaint:

- Telephone Company Wireless Carrier Internet Access Service Provider
- TV or Radio Station** Cable Company Satellite Provider Other

2. Please provide the details of your complaint, including the dates, times and nature of any conduct or activity complained of and identifying information of any companies, institutions or individuals involved:

a. Date (mm/dd/yyyy): **03/02/2010**

b. Time: **07:00 PM**

c. Name of company or individual: **KBMT-DT**

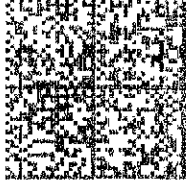
d. Details of the activity or conduct that form the basis for your complaint:

This evening when attempting to watch **LOST** on **KBMT 12.1** I was unable to enjoy the **ABC** programming due to the fact that it was election night and when **KBMT** ran the election result graphics on the TV, the Closed Caption would disappear. For the full two hours of **LOST** programming, the repeat and the first run episode, the station would run the graphics during the programming and remove them for the commercials, thus eliminating the **CC** during the programming. I repeatedly called the station and asked them to return the **CC** to the programming, and they stated they were attempting to do that, with no result. This is **UNACCEPTABLE!** I depend on **CC** for enjoyment of television programming, and without it, to make a pun, I am **LOST**. For a moment, the **CC** appeared during programming, but it was **CC** of the last live station break with election results. So I know it can be done. Please make sure this does not happen again. Please help. I can hear it, I just don't understand the dialog, I need **CC**

Federal Communications Commission
Washington, D.C. 20554

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3-C437



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03/30/2010

Mailed From 20743

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Beaumont, TX 77701

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