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May 5, 2023

Federal Communications Commission
Consumer & Governmental Affairs Bureau
Disability Rights Office
45 L Street NE
Washington, D.C. 20554

Via Email to Timothy.Wynn@fcc.gov

Attn: Timothy Wynn

Re: Official Notice of Informal Complaint
FCC Ticket No. 6139712

Dear Mr. Wynn:

This firm is counsel to Tucson TV License Company, LLC, licensee of Television Station KVOA, Tucson, Arizona (“KVOA” or the “Station”). KVOA is affiliated with the NBC Network on its primary .1 program stream and Cozi TV on its multicast .2 program stream.

Pursuant to Sections 713 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 613, 154(i), and Section 79.1 of the FCC’s Rules, 47 C.F.R. § 79.1, this letter responds to the informal complaint submitted to the Federal Communications Commission (“FCC”) by Mr. Thomas Mulligan, which has been assigned Ticket Number 6139712 (the “Complaint”) by your office.¹ The Official Notice of Informal Complaint (the “Notice”) concerning this matter was issued by your office to KVOA on April 6, 2023. Accordingly, this response to the Notice is timely filed within thirty (30) days of the date thereof.

KVOA understands the concerns expressed in the Complaint primarily implicate the FCC’s enhanced Electronic Newsroom Technique (“ENT”) closed captioning standards, 47 C.F.R. § 79.1(e)(11),² currently applicable to broadcasters in markets outside the Top 25. Your office specifically highlighted in the Notice the rule providing as follows: a station relying on ENT will be deemed in compliance with rules requiring captioning of live programming or programming originally transmitted live if non-scripted “live interviews or live on-the-scene or breaking news

¹ KVOA previously responded to an earlier informal complaint from Mr. Mulligan by letter dated March 2, 2023 (Ticket No. 6004531).

² The Complaint takes issue with the substance of the FCC’s closed captioning rules, themselves, which KVOA does not address.

segments are . . . supplement[ed] . . . with crawls, textual information, or other means (to the extent technically feasible).”³

The specific programming in the Complaint that KVOA could identify was the 12:00 PM (noon) local news on April 3, 2023 (the “April 3 Newscast”). The Station’s General Manager Peter O’Brien and the undersigned have viewed the Complaint, the video segments submitted by Mr. Mulligan and made available via email, and, separately, the entire April 3 Newscast referred to in the Complaint.⁴ A link to video of the April 3 Newscast in question is being submitted by email under separate cover.

As noted in KVOA’s response to the prior complaint, KVOA is located outside the top 25 Nielsen television markets and, as such, is permitted to and does rely on ENT to provide closed captioning for its local newscasts.

Upon receipt of the Notice on April 6, 2023, Mr. O’Brien contacted legal counsel the next day and sought further assistance. The video submitted by Mr. Mulligan was promptly examined, and the April 3 Newscast video was researched and shortly thereafter obtained and reviewed. The April 3 Newscast does not contain any live interviews or live on-the-scene or breaking news segments; rather, the April 3 Newscast includes live, in-studio anchor and weather reporting and prepackaged, non-live reporting segments—all of which are closed captioned using ENT, as permitted. Accordingly, the FCC’s rule concerning live interviews or live on-the-scene or breaking news reporting is not applicable to the newscast content in question. However, KVOA’s ordinary course procedures related to live interviews and live on-the-scene and breaking news coverage are as follows:

- The Station’s news department scripts live on-the-scene reporting, and those scripts are fed through ENT to deliver closed captioning to viewers.
- Live interview questions are scripted.
- The news department contracts for live closed captioning from a third-party vendor when there is significant live breaking news. Unscripted breaking news has been fairly rare for KVOA in recent months.
- In cases of less significant breaking news, i.e., when live on-the-scene reporting is “last minute” in nature, and for responses to live interview questions, the Station’s news

³ 47 C.F.R. § 79.1(e)(11)(i)(D).

⁴ The video submitted by Mr. Mulligan via email contains a short segment of the April 3 Newscast. The video submitted by Mr. Mulligan was closed captioned and appears to meet the FCC’s rules, including the applicable enhanced ENT requirements. To the extent it is helpful to Mr. Mulligan, KVOA explains that it intentionally uses ellipses (“...”) and arrows (“>>>”) to convey additional information via captioning. Ellipses are used to express a pause in the script and arrows or dashes to reflect a transition to a different story. So, for example, the ellipses in the submitted examples were scripted pauses in the anchor’s speech.

department will supplement the aural reporting with visual bullet points or a lower third summary of the subject matter, to the extent feasible.

These practices are in keeping with FCC rules, i.e., 47 C.F.R. § 79.1(e)(11)(i)(D). Sample newscast segments were reviewed to confirm—and do, in fact, confirm—that KVOA generally follows these ordinary course practices.

Additionally, as demonstrated in the April 3 Newscast video, KVOA is generally meeting its enhanced ENT obligations, including those applicable to live, in-studio weather segments, and is working to strengthen its performance with informal training and reminders to newsroom personnel. Interstitial weather segments are scripted.⁵ The scripts convey the material points of the weather information covered in the segment but do not in every case precisely track the words used on the air. The aural content spoken on air is supplemented with visual maps and weather graphics, in addition to closed captioning provided via scripts and ENT. These practices are consistent with applicable FCC rules, i.e., 47 C.F.R. § 79.1(e)(11)(i)(B). KVOA values and will continue its efforts to build on its already solid performance in this area.

Finally, KVOA understands and is sympathetic to Mr. Mulligan’s expressed frustration with today’s closed captioning environment. Unfortunately, KVOA—like so many other similarly situated stations—does not currently have the resources to retain and deploy live third-party captioning in multiple daily newscasts, and advanced technologies are both expensive to implement and not fully proven yet. Closed captioning of ordinary course live, unscripted content is regrettably imperfect using existing technologies; thus the FCC’s rules recognize and are currently calibrated based on that practicality.

* * *

This letter is being emailed to Mr. Mulligan at the same time it is being emailed to the Commission’s Disability Rights Office. This letter is supported by the attached Declaration and Certification of the licensee Officer and General Manager, Peter O’Brien, which indicates that he has read this letter and that to the best of his knowledge the information is true and correct.

⁵ KVOA notes that two of four live interstitial weather segments in the April 3 Newscast did not display closed captioning. The material points of the aural content were addressed via graphic displays and/or were covered in the other closed-captioned weather interstitials. It is believed the scripts for these two segments were inadvertently missed. The Station will continue to emphasize scripting for weather interstitials.

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Should you have any further questions regarding this matter, please do not hesitate to contact the undersigned.

Sincerely,

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.

A handwritten signature in blue ink, appearing to read "Elizabeth Spainhour".

Elizabeth Spainhour
Counsel to Tucson TV License Company, LLC

Enclosures

cc: Mr. Thomas Mulligan (via trans77camino@hotmail.com)

DECLARATION AND CERTIFICATION OF OFFICER AND GENERAL MANAGER

I, Peter O'Brien, 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 the Vice President of Tucson TV License Company, LLC and the General Manager of KVOA. I have held this position at all relevant times.

2. My signature below indicates, under penalty of perjury, that I have reviewed the Complaint from Thomas Mulligan and the Notice of Informal Complaint from the FCC and am familiar with their contents, I have reviewed the foregoing correspondence from Elizabeth Spainhour in response to each (the "Response"), and, except for those items of which official notice may be taken or those that are supported by references to separate authority, I hereby verify, to the best of my knowledge, information, and belief, the truth and accuracy of the factual 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 her personal knowledge.

This, the 5th day of May, 2023.

By: 

Peter O'Brien
Vice President of Tucson TV License Company, LLC,
and General Manager of KVOA