

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

OFFICIAL
NOTICE OF INFORMAL COMPLAINT

August 3, 2011

In reply refer to case number: 11-C00302012 (SK)
(Bandolas) (KMTR-TV)

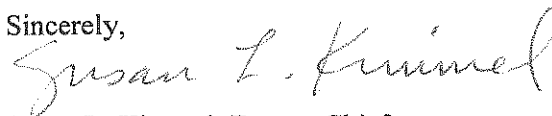
THE COMPANY IDENTIFIED IN THE ATTACHED COMPLAINT IS REQUIRED TO RESPOND TO THIS NOTICE OF INFORMAL COMPLAINT WITHIN 30 DAYS OF THE DATE OF THIS NOTICE. Failure of any person to answer any lawful Commission inquiry is considered a misdemeanor punishable by a fine under Section 409(m) of the Communications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

Written responses must be filed with the Commission at 445 12th St., SW, Washington, D.C. 20554. A separate response should be filed for each individual complaint. Each response should include: (1) the Complainant's name, and (2) the Case number. Companies are directed to send copies of their responses to the complainant at the same time their responses are forwarded to the Commission.

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 Susan.Kimmel@fcc.gov AND to Sherita.Kennedy@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 Sherita Kennedy 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.

Sincerely,



Susan L. Kimmel, Deputy Chief
Disability Rights Office/CGB

Attachment(s)
K:613/79.1



July 22, 2011

Federal Communications Commission
Consumer and Governmental Affairs Bureau
Consumer Inquiries and Complaints Division
445 12th Street, S.W.
Washington, DC 20554

Re: Bonne Bandolas
744 Barrett
Eugene, OR 97404

FCC IC File Number:	11-C00302012-1
ESL Ticket Number:	ESL 00348139
Response Type:	NOIC-Notice of Informal Complaint
Date of Notice:	06/21/11

Dear Sir/Madam:

I am writing in response to the above referenced inquiry submitted to the Commission by Bonne Bandolas regarding the lack of closed captioning during a televised memorial service on KEZI, KVAL and KMTR. Comcast strives to provide outstanding customer service and I appreciate your bringing this matter to my attention.

Upon receipt of the complaint from the customer, the Comcast System immediately investigated the complaint. Comcast technicians ensured that our headend equipment was working properly and was appropriately passing through the closed captions that the System received from these broadcasters. In addition, we audited the broadcaster's content. Currently, it appears that the problem is related to the local affiliates' delivery of the signal or failure to author the captioning data. Comcast has contacted the above-referenced broadcasters and made them aware of this captioning complaint.

I trust this letter provides your office with the information required in this matter. I am providing a copy of this letter to Bonne Bandolas so that she may contact me directly to discuss any questions or concerns.

Sincerely,

Chelsi White
Executive Escalations
1-866-896-6015

Cc: Bonne Bandolas



Admin 2000 [Switch to Admin1088]

Sherita.Kennedy [CAM] Logout

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Form 2000C (Disability Access Complaint) : 11-C00302012-1

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

USER FORM

[Consumer Party History](#)
 [Consumer History](#)
 [Form History](#)
 [Edit Form](#)

User Complaint Number: 11-C00302012 User Complaint Key: 11-C00302012-1

Complaint Source: Web Added User: Consumer

Submission date: 05/06/2011

CONSUMER'S INFORMATION

First Name: Bonne Last Name: Bandolas

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

PO Box:

Address1: 744 Barrett Address2:
 City: Eugene State: OR Zip Code: 97404

Telephone Number(Residential or Business): (541) 689 -3701 Ext:

E-mail Address: bonne3@gmail.com

Are you filing information on behalf of another party, such as client, parent, spouse or roommate? **No**
 If yes, complete items a through h.

Your relationship with the party:

The party's first name:

The party's last name:

The party's daytime phone number: () - Ext:

The party's street address or post office box number:

City: State: Zip Code:

E-mail Address:

Fax Number: () -

IMPORTANT: Please indicate the preferred format or method of response to the complaint by the Commission and defendant:

- Letter Facsimile (fax) Telephone Voice
- TRS (designate form of TRS and appropriate contact information)
- TTY Internet E-mail ASCII Text Audio-Cassette Recording Braille

FORM 2000C:

1. Check the appropriate box for your type of complaint:
 - Telecommunications Relay Service (TRS) (i.e., TTY-based, IP Relay, CapTel, IP CapTel, Speech-to-Speech, Video Relay Service (VRS))
 - Accessibility of emergency information on television
 - Closed Captioning
 - Wireless telephone equipment or service (includes hearing aid compatibility and other accessibility issues)
 - Wire line telephone equipment or service (includes hearing aid compatibility and other accessibility issues)
2. Provide the name, address and telephone number (if known) of the company(s) involved in your complaint:

Name: **University of Oregon, KEZI, KVAL& KMTR (top VPPs)**

City: **Eugene & Springfield** State: **OR** Zip Code:

Telephone number: () -
3. If your complaint is about accessibility of telecommunications services or equipment, provide the make and model number of the equipment or device that this complaint is about:
4. If your complaint is about closed captioning or emergency information on television, provide the date (mm/dd/yyyy) **04/29/2011** Time: **01:30 PM** and any details of when the event or action you are complaining

about occurred: Eugene Police Officer (EPD) Chris Kilcullen was shot and killed in the line of duty on April 22nd, 2011. Not only was this the first line-of-duty death of an EPD officer since 1934, Officer Kilcullen was a well-known and greatly respected man in our community. On Friday, April 29th, following a 22-mile procession, a Celebration of Life was held for him at the University of Oregon and covered by all three networks. This memorial, televised live, was two and a half hours in duration and attended by 5,500 people. Closed captioning was not available, nor was it for all of the live coverage before and after the ceremony. I emailed KVAL before the service began to confirm there would be captioning. I also emailed KEZI during the televised service as I thought the lack of captioning was due to an equipment glitch at the stations. (I received a quick reply from Greg Raschio of KVAL which I appreciate but to-date none from KEZI).

5. If your complaint is about access to emergency information on television, provide the following information:
 - a. Television station call sign and network name (if applicable), or channel name (e.g., "WZUF, CBC," "WZUE-TV," "Sportingchannel West"):
 - b. Channel (e.g., "13"):
 - c. Station or subscription TV provider system location:
City: County: State:
 - d. Date(s) and time(s) of emergency: and time
 - e. Detailed description of the emergency (i.e., flood, hurricane, tornado, etc., as well as the areas in which the emergency occurred):
6. If your complaint is about closed captioning, provide the following:
 - a. Television station call sign and network name (if applicable), or channel name (e.g., "WZUF, CBC," "WZUE-TV," "Sportingchannel West"): **UofO, KEZI, KVAL, KMTR**
 - b. Channel (e.g., "13"): **3, 8 and 9**
 - c. Station or subscription TV provider system location:
City: **Eugene & Springfield** County: **Lane Co.** State: **OR**
 - d. If you pay to receive television programming, type of subscription service (e.g., cable, satellite): **cable**
 - e. If you pay to receive television programming, name of company to whom you subscribe: **Comcast**
 - f. Name of program(s) involved: **Live coverage of Officer Chris Kilcullen's Memorial**
7. Briefly describe your complaint and include the resolution you are seeking. If applicable, provide a full description of the telecommunications equipment or customer premises equipment (CPE) and/or the telecommunications service about which the complaint is made, and the date or dates on which the complaint either purchased, acquired or used, or attempted to purchase, acquire or use the telecommunications equipment, CPE or telecommunications service about which the complaint is being made. **I want to understand why the 4/29/11 event (& related coverage) was not captioned. I struggled throughout the 2.5 hour Ceremony (2-4:30 pm) trying to speech-read and understand the tributes to a man who was such a significant person in our community. TV stations are in business to provide news that impact peoples' lives. Consider the public outcry if this event had been televised to viewers without *sound*. Captioning is the *equivalent* of sound to people like me who have hearing loss. It is with captioning, that news and events are delivered in a format that includes us. Regarding resolution, I'm requesting that in the future, live broadcasts of significant news and events, be accessible to *all* community members, not just ones who hear well, through the use of closed captioning. Resolution will require *awareness* of the diversity of peoples' needs, desire for finding attainable solutions and the leadership to meet not just legal but moral obligations. Thank you.**



August 25, 2011

BY HAND DELIVERY AND ELECTRONIC MAIL

Ms. Susan L. Kimmel
Federal Communications Commission
Consumer & Governmental Affairs Bureau
Disability Rights Office
445 12th Street SW
Room TW-A325
Washington, D.C. 20554

**Re: Case No. 11-C00302012 (SK)
(Bandolas) (KMTR-TV)**

Dear Ms. Kimmel:

KMTR, Eugene, Oregon (KMTR or the "Station"), respectfully submits this response to the Informal Complaint submitted by Bonne Bandolas ("Complainant") and forwarded to the Station with an "Official Notice of Informal Complaint" dated August 3, 2011. The Informal Complaint concerns the closed captioning of the Station's April 29, 2011 live coverage of a memorial service for a police officer killed in the line of duty. For the reasons stated below, the Station was not required to provide live captioning for its coverage of this event.

I. ELECTRONIC NEWSROOM TECHNIQUE

KMTR utilizes the electronic newsroom technique ("ENT") to caption its news and other live programming, in accordance with 47 C.F.R. § 79.1(e)(3). That rule provides that "[l]ive programming or repeats of programming originally transmitted live that are captioned using the so-called 'electronic newsroom technique' will be considered captioned" for stations outside of the top 25 Nielsen Designated Markets Areas ("DMA"). The Station is located in the Eugene DMA, which is DMA No. 118.

The ENT methodology enables the Station to caption all of the scripted portions of its live programming. However, because ENT relies on converting a script into captions, this methodology does not create captions for unscripted portions of live programming. In adopting the rule allowing stations outside of the top 25 DMAs to utilize ENT, the Commission recognized this limitation but nevertheless determined that stations in these markets should not

be required to provide real-time captioning for live programming.¹ Accordingly, and consistent with the FCC's authorization for KMTR to rely on ENT, KMTR's live, unscripted coverage of the memorial service did not include real-time captions.²

II. EXEMPTION FOR LOCAL, NON-NEWS PROGRAMMING

In the alternative, the Station respectfully submits that its coverage of the memorial service qualifies for the exemption for local, non-news programming. Specifically, 47 C.F.R. § 79.1(d)(8) exempts from the closed captioning requirements "[p]rogramming that is locally produced by the video programming distributor, has no repeat value, is of local public interest, is not news programming, and for which the 'electronic news room' technique of captioning is unavailable." Here, KMTR produced its live coverage locally and it did not repeat it. The programming pertained to a community event of local public interest, and ENT was not available because the event was unscripted. In this respect, the Station's coverage was akin to coverage of a local parade, which the Commission has identified as an example of the kind of "local, non-news programming" that is exempt from the captioning requirements.³

* * *

Consistent with the FCC's authorization for KMTR to rely on ENT, KMTR's live, unscripted coverage of the memorial service did not include real-time captions. In the alternative, the Station's coverage qualifies for the exemption for local, non-news programming. For the reasons described above, the FCC should dismiss the Informal Complaint.

¹ See *Closed Captioning of Video Programming*, Order on Reconsideration, 13 FCC Rcd 19973, at paras. 32-42 (1998).

² The memorial service was proceeded by a funeral procession. The Station did not air the funeral procession in its entirety. Prior to its live coverage of the memorial service, however, the Station aired a brief news cut-in showing video from the funeral procession, and this news cut-in was captioned via ENT.

³ See *Closed Captioning of Video Programming*, Report and Order, 13 FCC Rcd 3272, at para. 158 (1997) (describing "truly local" programming of "one time appeal," such as local parades, as the type of programming that would be exempt from the captioning requirements).

Ms. Susan L. Kimmel
August 25, 2011
Page 3

If you or your staff have any questions about this response, please contact our FCC counsel at Covington & Burling LLP, Mace Rosenstein (202-662-5460, mrosenstein@cov.com) or Eve R. Pogoriler (202-662-5345, epogoriler@cov.com).

Respectfully submitted,



Cambra Ward
Vice President and General Manager

cc: Bonne Bandolas (by e-mail: bonne3@gmail.com)
Ms. Sherita Kennedy (by e-mail: Sherita.Kennedy@fcc.gov)