

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

OFFICIAL  
NOTICE OF INFORMAL COMPLAINT

June 28, 2011

In reply refer to case number: 11-C00306554 (SK)  
(Moore) (KOKI-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.**

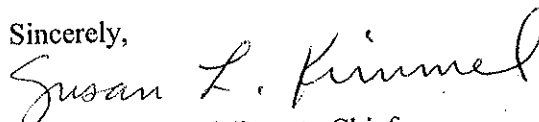
Failure of any person to answer any lawful Commission inquiry is considered a misdemeanor punishable by a fine under Section 409(m) of the Communications Act (Act), 47 U.S.C. § 409(m). Further, failure to comply with any order of the Commission can result in prosecution under Section 401(b) of the Act, 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 12<sup>th</sup> 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](mailto:Susan.Kimmel@fcc.gov) AND to [Sherita.Kennedy@fcc.gov](mailto: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](mailto: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



FOR FCC INTERNAL USE ONLY

Admin 2000 [ Switch to Admin1088 ]

Sherita.Kennedy [CAM] Logout

- HOME
- SEARCH
- NEW COMPLAINT
- HELP
- DOWNLOAD
- In-Process Complaints
- Completed Complaints
- Served Complaints

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Form 2000C (Disability Access Complaint) : 11-C00306554-1

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-C00306554      User Complaint Key: 11-C00306554-1

Complaint Source: Web      Added User: Consumer

Submission date: 05/27/2011

CONSUMER'S INFORMATION

First Name: Elaine      Last Name: Moore

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

PO Box:

Address1: 7801 E 27th St S      Address2:

City: Muskogee State: OK      Zip Code: 74403

Telephone Number(Residential or Business): (918) 636 -4484 Ext:

E-mail Address: Mrsmoore42410@aim.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:

- 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)
- Provide the name, address and telephone number (if known) of the company(s) involved in your complaint:
 

Name: Fox 23 news

City: Tulsa State: OK Zip Code:

Telephone number: ( ) -
- 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:
- If your complaint is about closed captioning or emergency information on television, provide the date (mm/dd/yyyy) 05/24/2011 Time: 06:30 PM and any details of when the event or action you are complaining

about occurred: **There was no CC on fox 23 news Tuesday May 24 when there were dangerous storms and tornados moving thru most of oklahoma**

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"): **KOKI fox 23**
  - b. Channel (e.g., "13"): **23**
  - 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"): **KOKI**
  - b. Channel (e.g., "13"): **23**
  - c. Station or subscription TV provider system location:  
City: County: State:
  - d. If you pay to receive television programming, type of subscription service (e.g., cable, satellite):
  - e. If you pay to receive television programming, name of company to whom you subscribe:
  - f. Name of program(s) involved: **Fox23**
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. **Fox 23 needs to be required to provide CC during all news and weather segments especially during life-threatening weather.**



# NEWPORT

T E L E V I S I O N

June 30, 2011

[BY ELECTRONIC MAIL]

Elaine Moore  
7801 E 27th Street S  
Muskogee, Oklahoma 74403  
e-mail: Mrsmoore42410@aim.com

**Re: Official Notice of Informal Complaint  
FCC No. 11-C00306554 (SK)  
(Moore) (KOKI-TV)**

Dear Mrs. Moore:

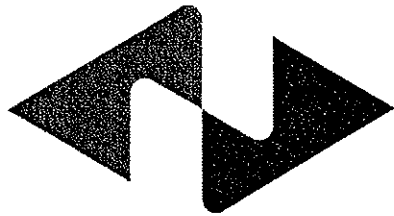
On June 28, 2011, we received from the Federal Communications Commission ("FCC") the above-referenced Official Notice of Informal Complaint, dated June 28, 2011, and a copy of your complaint regarding the closed captioning of certain programming aired by KOKI-TV. We are writing to let you know that we received these materials and also that we take the concerns of our viewers very seriously. We will provide you with a copy of KOKI-TV's response when it is filed with the FCC.

Very truly yours,

Holly Allen  
Vice President, General Manager  
KOKI-TV

cc (via e-mail):  
Ms. Susan Kimmel, FCC  
Ms. Sherita Kennedy, FCC





# NEWPORT

T E L E V I S I O N

July 28, 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-C00306554 (SK)**  
**(Moore) (KOKI-TV)**

Dear Ms. Kimmel:

KOKI-TV, Tulsa, Oklahoma (“KOKI” or the “Station”) respectfully submits this response to the Informal Complaint submitted by Ms. Elaine Moore and forwarded to the Station with an “Official Notice of Informal Complaint” dated June 28, 2011. The Informal Complaint concerns the closed captioning and visual accessibility of emergency information presented by the Station during the severe weather events that took place in KOKI’s service area on the evening of May 24, 2011. In this response, the Station describes the extraordinary weather events on the day in question, shows how the Station’s personnel rose to meet the challenge of reporting on those events, explains how the Station met and exceeded its closed captioning obligations, and details the wealth of emergency information provided in visual format so that viewers with hearing disabilities would be informed of the ongoing weather situation.

**I. BACKGROUND ON THE STATION’S SEVERE WEATHER COVERAGE**

On May 24, 2011, a system of thunderstorms and tornadoes swept through Oklahoma, including through the Station’s service area in and around Tulsa. The weather was extraordinarily severe. As events unfolded, the Station mobilized its staff to provide thorough and constant coverage for its viewers. Highlights of the station’s efforts are as follows:

- KOKI put out an “all call” to the entire newsroom staff at approximately 12:00 noon, notifying all news personnel of the storms that were predicted to arrive



later in the day so that they would be prepared to report to work at a moment's notice.

- The entire weather team worked throughout the Station's storm coverage. Three meteorologists were in the newsroom, one meteorologist and a storm tracker were sent out in vehicles to describe the weather from the field, and two producers provided damage reports to the weather team and managed the deployment of reporters and photographers to various storm locations.
- KOKI sent six reporters and photographers into the field to provide live reports.
- The Station assigned the Programming Director, the Director of Sales, and the Executive Assistant to field calls from viewers concerning damage reports and concerning programming changes (due to preemptions of regularly scheduled programming). This assignment was in addition to their day-to-day responsibilities.
- Four of the Station's producers worked in the newsroom to gather information from area disaster teams, the Red Cross, and others.
- Two main anchors and the Sports Director worked to provide information about the storms via FOX23.com and to the Station's approximately 40,000 followers on Facebook and Twitter.

In total, 27 Station employees worked over 10 hours each on May 24, resulting in approximately 94 hours of overtime expenses for the Station. In addition, KOKI's decision to provide continuous weather coverage resulted in the preemption of regularly-scheduled programming and its associated commercial advertising. Numerous viewers complained to the Station about the preemption of popular programming (including "The Simpsons," "King of the Hill," the two-hour finale of "American Idol," and "Seinfeld").<sup>1</sup> The preemptions of those programs and the commercials that would have aired during the Station's regular news programs (the 5:00 p.m., 9:00 p.m., and 10:00 p.m. news) caused substantial revenue losses.

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<sup>1</sup> The Station notes that it received no calls on its closed captioning hotline at any point during the evening. The only viewer calls to the Station concerned complaints about the preemption of regularly scheduled programming.

## II. CLOSED CAPTIONING

The Informal Complaint states that “[t]here was no CC on fox 23 news Tuesday May 24 when there were dangerous storms and tornadoes moving thru most of oklahoma” and asserts that “Fox 23 needs to be required to provide CC during all news and weather segments especially during life-threatening weather.”<sup>2</sup>

In accordance with 47 C.F.R. § 79.1(e)(3), KOKI, which is located outside of the top 25 markets, uses the electronic newsroom technique (“ENT”) to caption its newscasts.<sup>3</sup> As the Commission has recognized, for stations using ENT, unscripted news programming, including weather coverage, will not be captioned.<sup>4</sup> Thus, while the scripted portions of the Station’s newscasts are captioned via ENT, unscripted portions of the news—including weather coverage—are not captioned in real-time, as is permitted under the FCC’s rules.

Despite the fact that the Station was not obligated to provide real-time captioning, and notwithstanding the chaos of the evening, Station personnel contacted a captioning service at approximately 7:45 p.m. and real-time captioning commenced soon after. Live captioning was provided through 12:15 the next morning. KOKI went above and beyond its captioning obligations by engaging the real-time captioning service.

## III. VISUAL ACCESSIBILITY OF EMERGENCY INFORMATION

KOKI endeavors to serve the needs of all of its viewers, including those who are deaf or hard of hearing. Even though its resources and personnel were stretched thin, both before and after it activated live captioning, the Station presented salient information in a manner accessible to persons with hearing disabilities through the use of crawls, maps, and other visual presentations.

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<sup>2</sup> Informal Complaint at 2.

<sup>3</sup> The Station is located in the Tulsa Nielsen Designated Market Area (“DMA”), which is DMA # 61. Section 79.1(e)(3) of the Commission’s rules, 47 C.F.R. § 79.1(e)(3), 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 DMAs.

<sup>4</sup> “Only material that is scripted can be captioned using this technique and, thus, within a program live field reports, breaking news, sports and weather may remain uncaptioned.” *Closed Captioning of Video Programming*, Order on Reconsideration, 13 FCC Rcd. 19973, at para. 32 (1998); see also *id.* at para. 35 (noting that ENT does not caption field-reports and late-breaking weather).

**Crawls.** The Station broadcast a crawl at the bottom of the screen continuously throughout its severe weather coverage on the evening of May 24. The Informal Complaint identifies 6:30 p.m. as the time period at issue. In the hour surrounding that timeframe (6:00 p.m. to 7:00 p.m.), crawls provided viewers with the following information:

- That thunderstorm and tornado warnings and watches were in effect, and which counties were affected by those warnings and watches. The warnings and watches were provided numerous times during the Station's weather coverage.
- The speed and direction of the storm. For example, at 6:02 p.m., the crawl noted that "A THUNDERSTORM WITH A HISTORY OF PRODUCING TORNADOES WAS LOCATED 7 MILES SOUTHWEST OF STILLWATER... MOVING NORTHEAST AT 45 MPH. THIS TORNADO WILL BE MOVING INTO SOUTHERN PARTS OF STILLWATER SHORTLY. TAKE COVER." The crawl then identified the specific locations subject to the warning, including the mile markers between which Interstate 39 was affected. At 6:27 p.m., the crawl noted the location of a thunderstorm capable of producing a tornado, specified the direction and speed at which the storm was traveling, and identified communities in or near the storm's path. At 6:44 p.m., the crawl provided an update that a storm capable of producing a tornado was located near one identified community and heading northeast at 50 miles per hour towards other identified communities.
- Detailed instructions on how to take shelter. At 6:28 the crawl advised: "PRECAUTIONARY PREPAREDNESS ACTIONS... IF YOU ARE NEAR THE PATH OF THIS STORM... TAKE COVER NOW! IF NO UNDERGROUND SHELTER IS AVAILABLE MOVE TO AN INTERIOR ROOM ON THE LOWEST FLOOR. MOBILE HOMES AND VEHICLES SHOULD BE ABANDONED FOR MORE SUBSTANTIAL SHELTER. AVOID WINDOWS!" At 6:31 it identified the specific counties covered by a tornado warning and warned "TAKE SHELTER INDOORS, AWAY FROM WINDOWS, IN A SAFE ROOM OR SMALL INTERIOR ROOM. IF IN A MOBILE HOME, EVACUATE TO A SUBSTANTIAL STRUCTURE," then separately identified the area covered by a severe thunderstorm warning and again provided shelter instructions. Similar warnings were provided frequently during the Station's weather coverage.

**Maps and Other Visual Presentations.** Except when the Station cut away for live reports from the field, maps providing extensive information about the storm were displayed almost continuously throughout the Station's weather coverage. The maps showed the



Ms. Susan L. Kimmel  
July 28, 2011  
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geographic location of the storm and graphically indicated the storm's intensity. In addition, the meteorologist indicated the northeasterly direction in which the storm was heading (already described in the crawl) on the interactive map, which also displayed the names of the communities in the storm's path. Shelter instructions were summarized in on-screen bullet points (in addition to being provided in the crawl).

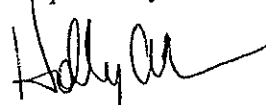
From the crawls, maps, and other graphical information, viewers with hearing disabilities would have understood, *e.g.*, which geographic areas were covered by the tornado and storm warnings and watches, where the severe weather was located and where the meteorologists predicted the weather would head, that it was recommended to take shelter, and how to do so effectively.

\* \* \*

During the severe weather events of May 24, 2011, KOKI mobilized its staff and undertook sustained and intensive efforts to keep its viewers informed. As part of these efforts, the Station engaged a live-captioning service, although it was not required to do so given its authorization to rely on ENT under the Commission's rules. Both before and after the live-captioning service came online, extensive information was presented visually. The Station believes that its weather coverage on May 24 served all of its viewers and the public interest. For the reasons described above, the FCC should dismiss the Informal Complaint.

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](mailto:mrosenstein@cov.com)) or Eve R. Pogoriler (202-662-5345, [epogoriler@cov.com](mailto:epogoriler@cov.com)).

Respectfully submitted,



Holly Allen  
Vice President and General Manager

cc: Ms. Elaine Moore (by e-mail: [Mrsmoore42410@aim.com](mailto:Mrsmoore42410@aim.com))  
Ms. Sherita Kennedy (by e-mail: [Sherita.Kennedy@fcc.gov](mailto:Sherita.Kennedy@fcc.gov))