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J. LEE LLOYD PARTNER AND SPECIAL COUNSEL
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W.H. HOLDERNESS (1904-1965)
L.P. McLENDON (1890-1968)
KENNETH M. BRIM (1898-1974)
C.T. LEONARD, JR. (1929-1983)
CLAUDE C. PIERCE (1913-1988)
THORNTON H. BROOKS (1912-1988)
G. NEIL DANIELS (1911-1997)
HUBERT HUMPHREY (1928-2003)
L.P. McLENDON, JR. (1921-2010)

GREENSBORO OFFICE
2000 RENAISSANCE PLAZA
230 NORTH ELM STREET
GREENSBORO, N.C. 27401

WRITER'S DIRECT DIAL

November 4, 2011

RECEIVED - FCC

NOV -7 2011

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: Official Notice of Informal Complaint, dated October 7, 2011
File No. 11-C00332051-FC Comcast & WESH-TV (Schwarz)

Dear Ms. Kimmel:

This firm is counsel to Orlando Hearst Television Inc., licensee of Television Station WESH, Daytona Beach, Florida ("WESH").

This letter responds to the informal complaint submitted to the Federal Communications Commission ("FCC") by Mr. Louis Schwarz pursuant to Section 713 of the Communications Act, 47 U.S.C. § 613, and Section 79.1 of the FCC's Rules, 47 C.F.R. § 79.1. This complaint has been assigned File No. 11-C00332051¹ by your office. WESH received notice of Mr. Schwarz's

¹ The Notice of Informal Complaint states "In Reply Refer To: 11-C0033051" but the Complaint enclosed with the Notice contains a User Complaint Key of 11-C00332051, which contains the additional numeral "2". We believe the correct file number is 11-C00332051 and that the "In Reply Refer To" line inadvertently omitted the numeral "2". This footnote is our effort to ensure that this Response is associated with the correct file, either 11-C0033051 or 11-C00332051.

complaint by Notice of Informal Complaint dated October 7, 2011, from the FCC's Consumer & Governmental Affairs Bureau's Disability Rights Office (the "Notice").²

In a nutshell, Mr. Schwarz's complaint identifies an issue that affected the closed captioning during the NBC network program "*Parenthood*" during the 10 p.m. airing on September 13, 2011. During *Parenthood*, the closed captions did not stay on-screen for the usual amount of time, but instead popped on and off the screen in a manner that made them difficult to read.

WESH has reviewed a recording of the September 13 episode of *Parenthood* and agrees that there were issues with some of the captioning during the first half of the program. A DVD containing a recording of the entire episode is enclosed. See Declaration of Lenora Boutte ("Boutte Declaration"), ¶ 3; Declaration of Brian Darragh ("Darragh Declaration"), ¶ 3. WESH also reviewed its internal records and found an email string from September 14 between a WESH engineer and a Comcast engineer discussing this issue. See Darragh Declaration, ¶ 3. Apparently, Mr. Schwarz, on September 13, had contacted Comcast—but not WESH—and identified the closed captioning issue during *Parenthood*. Comcast's engineer inquired of WESH, and WESH confirmed at that time that there was a problem with the captions that resolved itself midway through the *Parenthood* episode, which strongly suggested that it was an NBC network technical issue. See Darragh Declaration, ¶ 3. WESH's investigation has borne out that the captioning issue that affected the September 13 episode of *Parenthood* was not unique to WESH, which corroborates WESH's earlier conclusion that it was a network technical issue. Indeed, WESH's Director of Programming contacted another NBC affiliate who advised that its airing of the September 13 episode of *Parenthood* suffered from the same closed captioning defect. See Boutte Declaration, ¶ 3. In any event, WESH's recording demonstrates that the closed captioning provided by the NBC network during *Parenthood* was passed through by the station and that whatever technical issue caused the captioning to pop on and off the screen was resolved at approximately the 10:33 mark in the program. See Boutte Declaration, ¶ 3.

WESH takes very seriously its closed captioning obligations and service to the public, and WESH strives to achieve a high level of satisfaction for all its viewers. WESH reviewed its internal files and found no complaints or inquiries relating to closed captioning in the September 13 episode of *Parenthood*. See Boutte Declaration, ¶ 4. WESH believes it has a responsive internal system for handling viewer inquiries regarding closed captioning matters and invites Mr. Schwarz to contact the station directly the next time he notices an issue with closed captioning on WESH. See Boutte Declaration, ¶ 4. WESH invites Mr. Schwarz to use the closed captioning contact information set forth below (which is also available on the WESH.com website).

For NON-IMMEDIATE CLOSED CAPTIONING CONCERNS

Name: Lenora Boutte

Title: Director of Programming and Public Affairs

Phone: (407) 645-2222

Fax: (407) 539-7970

Address: 1021 N. Wymore Road, Winter Park, Florida 32789

Email: lboutte@hearst.com

² Pursuant to the directive in the Notice, correspondence acknowledging the Station's receipt of the Complaint was sent to Mr. Schwarz.

For critical IMMEDIATE CLOSED CAPTIONING CONCERNS

Phone: (877) 871-0165

Fax: (800) 441-1948

Email: weshcaptioning@hearst.com

If Mr. Schwarz contacts WESH directly with any closed captioning issues affecting WESH's programming, WESH can investigate any issue and respond directly to Mr. Schwarz. Of course, while WESH responded promptly to the inquiries of Comcast's engineer on September 14, WESH has no way of knowing whether Comcast responded to the inquiry made by Mr. Schwarz or what Comcast told Mr. Schwarz. *See* Darragh Declaration, ¶ 3. WESH is now addressing the issue for Mr. Schwarz a month after the program aired—WESH would be far more prompt in responding to any closed captioning inquiry if Mr. Schwarz were to contact the station directly the next time he identifies a closed captioning issue.

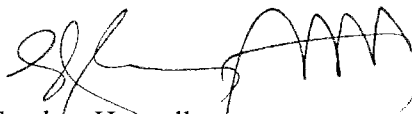
In light of the information provided above and on the enclosed DVD, it is apparent that WESH was in compliance with the Commission's closed captioning rules during the airing of the September 13 episode of *Parenthood*.

This Response is supported by the Declaration of Lenora Boutte, Director of Programming and Public Affairs for WESH, the Declaration of Brian Darragh, Assistant Chief Engineer for WESH, and the Certification of James J. Carter, President of Orlando Hearst Television Inc., who has indicated that he has reviewed this letter in his capacity as an officer of the licensee and that to the best of his knowledge and belief the information herein is true and correct.

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.



Stephen Hartzell

Counsel to Orlando Hearst Television Inc.

Enclosures

cc: Francine Crawford, FCC (via email)
Susan L. Kimmel, FCC (via email)
Mr. Louis Schwarz (via email)

CERTIFICATION OF LICENSEE

I, James J. Carter, 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 President of Orlando Hearst Television Inc., licensee of WESH, Daytona Beach, Florida (“WESH”). 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 7, 2011 (“Notice”), and I am familiar with its contents, I have reviewed the foregoing correspondence from Stephen Hartzell 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 do not have personal knowledge of any relevant facts, I am relying on the statements made in the Declaration of Lenora Boutte and the Declaration of Brian Darragh, 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 4th day of November, 2011.

By: 
James J. Carter
President, Orlando Hearst Television Inc.

DECLARATION OF LENORA BOUTTE

I, Lenora Boutte, hereby declare, under penalty of perjury, as follows:

1. I am greater than eighteen years of age and am competent to make this Declaration. I am Director of Programming and Public Affairs at WESH, Daytona Beach, Florida ("WESH"). I have held this position at all relevant times.

2. I have reviewed the Notice of Informal Complaint dated October 7, 2011 ("Notice"), and I am familiar with its contents. I submit this Declaration in support of WESH's Response to the Notice. I have personal knowledge of all matters discussed in this Declaration. I have reviewed the foregoing correspondence from Stephen Hartzell in response to the Notice, and, to the extent set forth below, I hereby verify the truth and accuracy of the information contained therein.

3. A DVD containing a recording of the entire September 13 episode of *Parenthood* is enclosed. In investigating the captioning issue that affected the September 13 episode of *Parenthood*, I contacted another NBC affiliate in another market, and that station advised that its airing of the September 13 episode of *Parenthood* suffered from the same closed captioning defect. This corroborates that the closed captioning issue was likely inherent in the network's feed of the program. The enclosed recording demonstrates that WESH passed through the closed captioning provided by the NBC network during *Parenthood* and that the captioning defect was resolved at approximately 10:33 p.m., which was halfway through the program.

4. WESH takes very seriously its closed captioning obligations and service to the public, and WESH strives to achieve a high level of satisfaction for all its viewers. In preparing the Station's Response, we reviewed our internal files and found no complaints or inquiries relating to closed captioning in the September 13 episode of *Parenthood*. I am the primary contact person at WESH for closed captioning issues. It is important to us that we promptly and thoroughly respond to viewer inquiries regarding closed captioning. We invite Mr. Schwarz to contact the station directly the next time he notices an issue with closed captioning on WESH using the closed captioning contact information set forth below.

For NON-IMMEDIATE CLOSED CAPTIONING CONCERNS

Name: Lenora Boutte
Title: Director of Programming and Public Affairs
Phone: (407) 645-2222
Fax: (407) 539-7970
Address: 1021 N. Wymore Road, Winter Park, Florida 32789
Email: lboutte@hearst.com

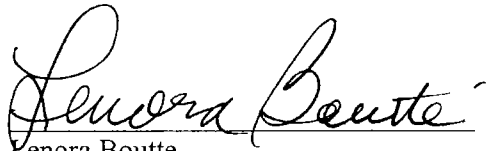
For critical IMMEDIATE CLOSED CAPTIONING CONCERNS

Phone: (877) 871-0165
Fax: (800) 441-1948
Email: weshcaptioning@hearst.com

[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 4th day of November, 2011.

By: 
Lenora Boutte
Director of Programming and Public Affairs, WESH

DECLARATION OF BRIAN DARRAGH

I, Brian Darragh, hereby declare, under penalty of perjury, as follows:

1. I am greater than eighteen years of age and am competent to make this Declaration. I am Assistant Chief Engineer of WESH, Daytona Beach, Florida ("WESH"). I have held this position at all relevant times.

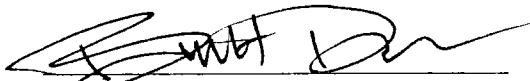
2. I have reviewed the Notice of Informal Complaint dated October 7, 2011 ("Notice"), and I am familiar with its contents. I submit this Declaration in support of WESH's Response to the Notice. I have personal knowledge of all matters discussed in this Declaration. I have reviewed the foregoing correspondence from Stephen Hartzell in response to the Notice, and, to the extent set forth below, I hereby verify the truth and accuracy of the information contained therein.

3. It is a high priority for WESH to ensure that closed captioning functions properly at the Station so that all viewers have access to the Station's programming. WESH routinely "passes through" closed captioning received in programming in compliance with FCC rules, and did so for the September 13 episode of *Parenthood*. On September 14, 2011, WESH received an email inquiry from an engineer at Comcast regarding closed captioning issues during the September 13 episode of *Parenthood*. I personally reviewed the Station's recording of the show from our mass logger (a copy of which is included with WESH's response), and I determined that the issue was likely a technical issue with the network feed of the program. About halfway through the program, the closed captioning improved. WESH promptly communicated that information back to Comcast's engineer on September 14, but we do not know whether, when, or what Comcast communicated back to Mr. Schwarz on this issue. WESH did not receive any viewer inquiries regarding the program.

[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 4th day of November, 2011.

By: 
Brian Darragh
Assistant Chief Engineer, WESH

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

October 7, 2011

In Reply Refer To: 11-C0033051-FC
Comcast & WESH-TV (Schwarz)

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 Francine.Crawford@fcc.gov. 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) 418-2085 or Francine.Crawford@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

Form 2000C – Disability Access Complaint

Consumer's Information:

First Name: **Louis** Last Name: **Schwarz**

Company Name:

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

Post Office Box Number:

(Official Post Office box Number Only)

Address 1: **2172 Blackville Drive**

Address 2:

Mailing Address (where mail is delivered)

City: **The Villages** State: **FL** Zip Code: **32162**

Telephone Number (Residential or Business): **Phone:(301) 242 - 9033**

E-mail Address: **deafbowtie@gmail.com**

Are you filing information on behalf of another party, such as client, parent, spouse or roommate?:

N

If yes, complete items a through h.

- a. Your relationship with the party:
- b. The party's first name:
- c. The party's last name:
- d. The party's daytime phone number:
- e. The party's street address or post office box number:
- f. City: State: Zip Code:
- g. E-mail address:
- h. Fax Number:

IMPORTANT: Please indicate the preferred format or method of response to the complaint by the Commission and defendant: , , **Internet E-mail**

Form 2000C – Disability Access Complaint

*** ANSWER EACH QUESTION THAT APPLIES TO YOUR SPECIFIC COMPLAINT ***

1. Check the appropriate box for your type of complaint:

Closed Captioning

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

Name: **Comcast**

City: **Orlando** State: **FL** Zip Code: **32819**

Telephone number: **Phone:(407) 226 - 2045**

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:

Captions popped up on and off too quickly - not able to read the whole captions

4. If your complaint is about closed captioning or emergency information on television, provide the date (mm/dd/yyyy) : **09/13/2011 22:00:00:PM**

and any details of when the event or action you are complaining about occurred:

Each captioned line showed up for a second or less popping on and off. Does not stay on for me to read the whole captions. Could not read them fast. I checked the channel 11 (NBC) and the captions are clear and loud. Probably something wrong with HD captions. During commercial breaks, captions were clear, so it is the programming issue. I checked other channels during their commercials and their captions are fine and clear

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:

e. Detailed description of the emergency (i.e., flood, hurricane, tornado, etc., as well as the 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"):

WESH (NBC)

b. Channel (e.g., "13"): **432**

c. Station or subscription TV provider system location:

City : **The Villages** County:**Sumter**

State: **FL**

Form 2000C – Disability Access Complaint

***** ANSWER EACH QUESTION THAT APPLIES TO YOUR SPECIFIC COMPLAINT *****

- d. If you pay to receive television programming, type of subscription service (e.g., cable, Satellite): **Cable (Comcast)**
- e. If you pay to receive television programming, name of the company to whom you subscribe: **Comcast**
- f. Name of program(s) involved: **Parenthood**

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 complainant 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: **Each captioned line showed up for a second or less popping on and off. Does not stay on for me to read the whole captions. Could not read them fast. I checked the channel 11 (NBC) and the captions are clear and loud. Probably something wrong with HD captions. During commercial breaks, captions were clear, so it is the programming issue. I checked other channels during their commercials and their captions are fine and clear**

You may submit this form over the Internet at <http://www.fcc.gov/cgb/complaints.html>, by e-mail to fccinfo@fcc.gov, by fax to 1-866-418-0232, or by postal mail to:

Federal Communications Commission
Consumer & Governmental Affairs Bureau
Consumer Complaints
445 12th Street, SW
Washington, D.C. 20554

In addition, you may submit your complaint over the telephone by calling 1-888-CALL-FCC or 1-888-TELL-FCC (TTY). If you choose to submit your complaint over the telephone, an FCC customer service representative will fill out an electronic version of the form for you during your conversation. If you have any questions, feel free to contact the FCC at 1-888-CALL-FCC or 1-888-TELL-FCC (TTY).

FCC NOTICE REQUIRED BY THE PAPERWORK REDUCTION ACT AND THE PRIVACY ACT

The Federal Communications Commission is authorized under the Communications Act of 1934, as amended, to collect the personal information that we request in this form. This form is used for complaints that involve disability access. The public reporting for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information. If you have any comments on this burden estimate, or how we can improve the collection and reduce the burden it causes you, please write to the Federal Communications Commission, OMD-PER, Paperwork Reduction Project (3060-0874), Washington, DC 20554. We will also accept your comments regarding the Paperwork Reduction Act aspects of this collection via the Internet if you send them to PRA@fcc.gov. PLEASE DO NOT SEND YOUR COMPLETED FORMS TO THIS ADDRESS.

Form 2000C – Disability Access Complaint

***** ANSWER EACH QUESTION THAT APPLIES TO YOUR SPECIFIC COMPLAINT *****

Remember - You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060 - 0874.

In addition, the information that consumers provide when filling out FCC Form 2000 is covered by the system of records notice, FCC/CGB-1, Informal Complaints and Inquiries File (Broadcast, Common Carrier, and Wireless Telecommunications Bureau Radio Services). The Commission is authorized to request this information from consumers under 47 U.S.C. 206, 208, 301, 303, 309(e), 312, 362, 364, 386, 507, and 51; and 47 CFR 1.711 et seq.

Under this system of records notice, FCC/CGB-1, the FCC may disclose information that consumers provide as follows: when a record in this system involves a complaint against a company, the complaint is forwarded to the defendant who must, within a prescribed time frame, either satisfy the complaint or explain to the Commission and the complainant its failure to do so; where there is an indication of a violation or potential violation of a statute, regulation, rule, or order, records from this system may be referred to the appropriate Federal, state, or local agency responsible for investigating or prosecuting a violation or for enforcing or implementing the statute, rule, regulation, or order; a record from this system may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit; a record on an individual in this system of records may be disclosed, where pertinent, in any legal proceeding to which the Commission is a party before a court or administrative body; a record from this system of records may be disclosed to the Department of Justice or in a proceeding before a court or adjudicative body when: (a) the United States, the Commission, a component of the Commission, or, when represented by the government, an employee of the Commission is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Commission determines that the disclosure is relevant or necessary to the litigation; a record on an individual in this system of records may be disclosed to a Congressional office in response to an inquiry the individual has made to the Congressional office; a record from this system of records may be disclosed to GSA and NARA for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall not be used to make a determination about individuals.

In each of these cases, the FCC will determine whether disclosure of the information in this system of records notice is compatible with the purpose for which the records were collected. Furthermore, information in this system of records notice is available for public inspection after redaction of information that could identify the complainant or correspondent, i.e., name, address and/or telephone number.

THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, PUBLIC LAW 104-13, OCTOBER 1, 1995, 44 U.S.C. SECTION 3507 AND THE PRIVACY ACT OF 1974, PUBLIC LAW 93-579, DECEMBER 31, 1974, 5 U.S.C. SECTION 552a(e)(3).