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November 30, 2012

Federal Communications Commission  
Consumer & Governmental Affairs Bureau  
Disability Rights Office  
Attn: Susan L. Kimmel, Deputy Chief  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

*Via Hand Delivery*

Re: Official Notice of Informal Complaint, dated October 31, 2012  
FCC Case No. 12-C00419768-1 (Fitzgerald) (WESH)

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. Ryan Fitzgerald 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 Case No. 12-C00419768-1 by the Disability Rights Office. WESH received notice of Mr. Fitzgerald’s complaint by Notice of Informal Complaint dated October 31, 2012, (the “Notice”) delivered by U.S. Mail.

Mr. Fitzgerald’s complaint identified August 20, 2012, at 12:00 AM as the date and time on which he was unable to see closed captions on WESH and another station. Because it is unclear whether Mr. Fitzgerald meant the midnight between August 19 and 20 or the midnight between August 20 and 21, WESH investigated both dates and times. *See* Declaration of Brian Darragh (“Darragh Declaration”), ¶ 4. As demonstrated by the recordings on the enclosed CDs, WESH’s midnight programming on both dates was closed captioned.<sup>1</sup> *See* Darragh Declaration, ¶ 4.

WESH had learned in late August that there was a potential issue with closed captioning on its channel on Cablevision of Marion County’s cable system. At that time, WESH investigated, and, finding no issues with its own equipment, WESH contacted Cablevision. *See*

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<sup>1</sup> For reasons that are not germane to the Notice, the quality of the recordings on the enclosed CDs is less than ideal, but they are the best recordings that WESH was able to make. In any event, each recording shows that the programming was closed captioned. *See* Darragh Declaration, ¶ 4.

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Darragh Declaration, ¶ 3. By August 22, 2012, WESH's Assistant Chief Engineer, Brian Darragh, communicated with Cablevision of Marion County about the issue and Cablevision personnel confirmed that they were having an equipment issue with an encoder. *See* Darragh Declaration, ¶ 3. At that time, Cablevision personnel indicated that they expected to have the issue addressed within a week's time. To WESH's knowledge, Cablevision did successfully repair or replace the equipment. *See* Darragh Declaration, ¶ 3.

WESH takes its closed captioning service seriously and endeavors to ensure that viewers have a positive closed captioning experience. In the event Mr. Fitzgerald—or his grandmother, whose home Mr. Fitzgerald was visiting at the time of the complaint—have difficulties with WESH's closed captioning again, WESH invites them to contact the station for assistance, and WESH wants Mr. Fitzgerald to know he can count on WESH to take the issue seriously and diagnose it. *See* Darragh Declaration, ¶ 4.

In light of the information provided herein, WESH respectfully requests that the complaint against it be dismissed.

This Response is supported by the Declaration of Brian Darragh, Assistant Chief Engineer for WESH, and the Certification of James J. Carter, President and General Manager 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: DROinquiries&complaints@fcc.gov  
Susan L. Kimmel, FCC (via email)  
Mr. Ryan Fitzgerald (via U.S. Mail and via email: rfitzgerald@invodo.com)

**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 Certification. I am President and General Manager of Orlando Hearst Television Inc., licensee of WESH, Daytona Beach, Florida (“WESH”). I have held these positions at all relevant times.

2. My signature below indicates, under penalty of perjury, that I have reviewed the Notice of Informal Complaint dated October 31, 2012 (“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 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 30<sup>th</sup> day of November, 2012.

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

## 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 31, 2012 (“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. In late August 2012, WESH learned of the closed captioning issue that was being experienced by Mr. Ryan at his grandmother’s home in Ocala, Florida. I investigated the issue and determined that WESH’s closed captioning was functioning properly. I then attempted to contact Cablevision of Marion County which provides cable service in Ocala. On August 22, 2012, I was able to secure oral confirmation from Cablevision personnel that they were aware of a closed captioning encoder issue and that they had sent their equipment out for repair or replacement and that they expected it to be resolved within a week. As I understand, the issue was thereafter resolved.

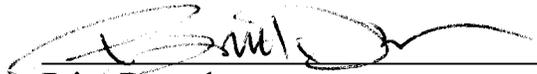
4. It is a high priority for WESH to ensure that closed captioning functions properly at the Station so that all viewers have access to the Station’s programming. WESH routinely “passes through” closed captioning received in programming in compliance with FCC rules, and did so for the programming that aired at midnight between August 19 and 20, 2012, and the programming that aired at midnight between August 20 and 21, 2012. I made or oversaw the making of the recordings that are being submitted with WESH’s Response. Both recordings show, albeit in less-than-ideal video quality, that closed captioning was intact and functioning during the programming on the dates and times referenced above. In the event Mr. Fitzgerald or his grandmother has any further closed captioning issues, I hope they will again contact WESH so that we can help to diagnose and resolve the issue.

**[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 30<sup>th</sup> day of November, 2012.

By:



Brian Darragh  
Assistant Chief Engineer, WESH