

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

COPY

In the Matter of
Bailey Cable TV Inc.
Enforcement Complaint Concerning
WVLA-TV, Baton Rouge, Louisiana

MB Docket 12-35
CSR 8585-C

FILED/ACCEPTED

JAN 25 2012

Federal Communications Commission
Office of the Secretary

To: The Secretary's Office
Attn: The Media Bureau

ENFORCEMENT COMPLAINT

Knight Broadcasting of Baton Rouge License Corp. ("White Knight"), licensee of full-power television station WVLA-TV, Baton Rouge, Louisiana, by its attorneys, hereby files this Enforcement Complaint against Bailey Cable TV Inc. (formerly known as Audubon Cablevision) ("Bailey"). Bailey currently retransmits the signal of WVLA-TV on its cable system serving St. Francisville, Louisiana; Angola, Louisiana; and certain unincorporated areas within West Feliciana Parish, Louisiana (the "Communities") without the consent of White Knight in violation of Section 325(b)(1)(A) of the Communications Act of 1934, as amended (the "Communications Act"), 47 U.S.C. § 325(b)(1)(A), and Section 76.64(a) of the Commission's rules, 47 C.F.R. § 76.64(a). White Knight seeks an Order compelling Bailey to comply with the law and imposing such sanctions on Bailey as the Bureau deems appropriate for the operator's knowing, deliberate, and continuing violations of the law.

Under the Communications Act and the Commission's rules, cable systems may not retransmit the signal of a television broadcast station without the consent of the broadcaster.

Section 325(b) of the Communications Act provides that cable systems and multichannel video programming distributors must obtain the “express authority of the originating station” to retransmit the signal of a broadcasting station.¹ Section 76.64 of the Commission’s rules adds the additional requirements that the originating station’s express consent must be in writing and must “specify the extent of the consent being granted.”² The Commission has stated that “properly documented retransmission of a television signal without consent would be grounds for imposition of a forfeiture.”³

The Communications Act requires Bailey to obtain White Knight’s consent to retransmit WVLA-TV. Bailey’s cable system serving the Communities is indisputably a multichannel video programming distributor within the meaning of Section 602 of the Communications Act.⁴ Based upon information and belief, it is a facility that is equipped to provide multiple channels of video programming and cable service to multiple subscribers within a community.⁵ Likewise, WVLA-TV is indisputably a broadcasting station within the meaning of Section 3 of the Communications Act because it is a television station equipped to broadcast a television signal to the public.⁶ Nielsen Media Research, Inc. has assigned WVLA-TV to the Baton Rouge Designated Market Area (“DMA”), and the Bailey system serves subscribers located within this DMA.⁷ White Knight properly elected retransmission consent for WVLA-TV on the Bailey

¹ 47 U.S.C. § 325(b)(1)(A) (emphasis added). Exceptions to this rule, including those for local commercial stations that elect to assert their must-carry rights, are not applicable here. See 47 U.S.C. §§ 325(b)(1)(B), 534(b).

² 47 C.F.R. §§ 76.64(a), 76.64(i), 76.64(j).

³ In the Matter of Implementation of the Cable Television and Consumer Protection and Competition Act of 1992, 8 FCC Rcd 2965, 3005 at para. 175 (1993).

⁴ See 47 U.S.C. §§ 522(7), 522(13).

⁵ See List of Registered Louisiana Cable Community, available at <http://www.fcc.gov/mb/engineering/list/LA.xls> (last visited January 13, 2012) (showing Bailey system registered as LA0250 in St. Francisville, Louisiana; LA0251 in Angola, Louisiana; and LA0457 in unincorporated West Feliciana Parish, Louisiana).

⁶ See 47 U.S.C. §§ 153(5), 153(6); See FCC File Number BLCDDT-20060621AAF.

⁷ See BIA/Kelsey, Investing in Television: *Market Report 2011* at 94 (identifying DMA assignments applicable to the current carriage cycle).

system serving the Communities for the 2012-2014 carriage cycle.⁸ Therefore, Bailey must obtain White Knight's express, written consent to retransmit WVLA-TV's signal on its cable system serving the Communities.

Bailey does not have White Knight's consent to retransmit WVLA-TV. The parties previously entered into a Retransmission Consent Agreement (the "Agreement") effective as of January 1, 2009. The Agreement, however, expired under its own terms on December 31, 2011. The parties have not extended or renewed the Agreement. Thus, since the Agreement expired on December 31, 2011, Bailey has been retransmitting the signal of WVLA-TV without White Knight's express, written consent.

White Knight made every effort to extend the Agreement with Bailey, but Bailey refused to engage in good faith negotiations and ignored repeated entreaties by White Knight to discuss the renewal of the Agreement on mutually acceptable terms. White Knight first contacted Bailey on August 5, 2011, when it sent its retransmission consent election statement. On September 1, 2011, White Knight sent Bailey a proposed amendment to the parties then-current Agreement. The proposed amendment would have extended the term of the Agreement until December 31, 2014.⁹ Bailey, however, never responded, so White Knight re-sent the draft amendment on October 14, 2011. Again, after receiving no response, White Knight's designated negotiator, Mr. Duane Lammers, called Bailey's office on November 30, 2011, and spoke to Mr. Bailey's assistant and sent her a copy of the draft amendment. Between December 6 and 22, 2011, Mr. Lammers contacted Bailey on three separate occasions asking about the status of the amendment, but each time, he received no substantive response. On December 30, 2011, when it became apparent that Bailey was unwilling to negotiate and unwilling to enter into a new retransmission agreement, Mr. Lammers contacted Bailey and advised it that at midnight on December 31,

⁸ See Exhibit A.

⁹ For support for all factual matters in this Enforcement Complaint, see the Declaration of Mr. Duane Lammers attached as Exhibit B.

2011, the Agreement would expire Bailey would no longer have authority to retransmit the programming for WVLA-TV.

Even though Bailey does not have White Knight's consent, Bailey continues to retransmit WVLA-TV.¹⁰ Accordingly, on January 3, 2012, Mr. Lammers called Bailey and left a voicemail. On that same day, White Knight faxed and e-mailed a letter to Bailey notifying it that, by continuing to retransmit WVLA-TV, it was violating federal law.¹¹ The next day, Mr. Lammers again called Bailey and spoke with Mr. Bailey. Mr. Bailey, however, insulted Mr. Lammers throughout the conversation and refused to negotiate with White Knight's designated negotiator in apparent violation of the Commission's good faith negotiation rules.¹² Later that day, on January 4, 2012, Bailey sent a retransmission consent counter proposal to White Knight's corporate headquarters. The offer was too little, too late, and out of step with marketplace conditions. Accordingly, on January 5, 2012, White Knight rejected the counteroffer. Nevertheless, Bailey continues to knowingly and willfully retransmit WVLA-TV's signal without consent, forcing White Knight to seek enforcement of its rights before the Commission.

¹⁰ See TV Listings Guide for Bailey Cablevision., at <http://tvlistings.zap2it.com/tvlistings/ZCGrid.do?method=decideFwdForLineup&zipcode=70775&setMyPreference=false&lineupId=LA17510> :- (last visited January 11, 2012).

¹¹ See Exhibit C..

¹² See 47 C.F.R. § 76.62(b)(1)(i).

CONCLUSION

Since January 1, 2012, Bailey brazenly has retransmitted WVLA-TV's signal on its cable systems without White Knight's express, written consent. White Knight repeatedly advised Bailey that its continued carriage of WVLA-TV's signal after January 1, 2012, would be without White Knight's authorization. Bailey therefore knowingly and willfully violated the Communications Act and the Commission's rules. White Knight requests that the Bureau promptly issue an order directing Bailey to come into compliance with its obligations with respect to WVLA-TV's signal on all of its cable systems and imposing such sanctions on Bailey as the Bureau deems appropriate.

Respectfully submitted,

White Knight Broadcasting of Baton Rouge License Corp.


Stuart Shorenstein

COZEN O'CONNOR
277 Park Avenue
New York, New York 10172
(212) 883-4923

Its Attorney

January 25, 2012

EXHIBIT A

Retransmission Consent Election Letter

CABLE LETTERS	COMMUNITY OF LICENSE	DMA TO WHICH NIELSEN MEDIA RESEARCH ASSIGNED STATION IN 2009-10 NSI
WVLA-TV	BATON ROUGE, LA	BATON ROUGE
DIAV CHANNEL (COVER THE AIR)	PRIMARY CHANNEL (VIRTUAL CHANNEL 12.1-15.1)	LICENSEE NAME
34	33.1	KNIGHT BROADCASTING OF BATON ROUGE LICENSE CORP

This Cable Election Notice is sent this 5 day of August 2011 via Certified Mail/Return Receipt Requested (Receipt Number 7005 0390 0000 1630 6824) to the following:

Operator: Audubon Cablevision
Address: 12189 Jackson Road
St. Francisville, LA 70775

With respect to all communities within the Station's "television market" (as defined in 47 C.F.R. § 76.55(e)) served by cable systems owned or managed by your company (including those listed in EXHIBIT A hereto) between January 1, 2012, and December 31, 2014, the Licensee elects the following status for the primary video stream of the Station's digital signal (licensee to check one box below):

retransmission consent.

mandatory carriage ("must-carry") on the following: (check one):

- The Station's PSIP major channel number ("virtual channel").
- The cable channel on which the Station was carried on July 19, 1985.
- The cable channel on which the Station was carried on January 1, 1992.

For further information or to request consent to the retransmission of any program stream to which a "must-carry" election does not apply, please contact:

Name: Duane Lammers
Address: 1001 Boardwalk Spring Place
Suite 111A
O'Fallon, MO 63367
Phone: 636-695-4127
Email: duanelammers@centurytel.net

The Licensee provides this Election Notice pursuant to 47 C.F.R. Section 76.64.

Signature:
Name/Title:

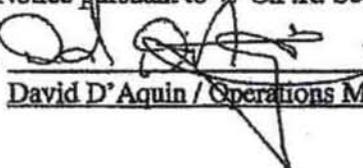

David D' Aquin / Operations Manager

EXHIBIT A

CALL LETTERS	COMMUNITY OR LICENSE	LICENSE
WVLA-TV	Baton Rouge, LA	Knight Broadcasting of Baton Rouge License Corp.

Communities in the Station's television market that are covered by the Cable Election Notice to which this Exhibit A is attached:

Angola

St Francisville

West Feliciana

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input type="checkbox"/> Agent <i>K. Medina</i> <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name)</p> <p>C. Date of Delivery AUG 6 2011</p>
<p>1. Article Addressed to:</p> <p>Audubon Cablevision 12189 Jackson Road St. Francisville, LA 70775</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label)</p>	<p>7005 0390 0000 1630 6824</p>
<p>PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540</p>	

EXHIBIT B

Declaration of Duane Lammers

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

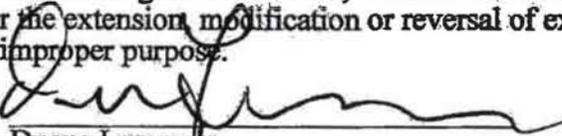
In the Matter of

Bailey Cable TV Inc.

Enforcement Complaint Concerning
WVLA-TV, Baton Rouge, Louisiana

DECLARATION OF DUANE LAMMERS

1. My name is Duane Lammers, and I serve as a retransmission consultant for Knight Broadcasting of Baton Rouge License Corp ("White Knight"), and I am its designated negotiator.
2. I have read the foregoing Enforcement Complaint (the "Complaint"), and I am familiar with the contents thereof.
3. On September 1, 2011, I sent a proposed amendment for the Retransmission Consent Agreement for WVLA-TV (the "Agreement") to Bailey Cable TV Inc. ("Bailey"). Between September 1, 2011 and December 31, 2011, I contacted Bailey on several occasions as described in the Complaint to attempt to negotiate in good faith an extension of the Agreement. On December 30, 2011, I advised Mr. Bailey that if the parties do not reach a new agreement for carriage of WVLA-TV, effective January 1, 2012, Bailey will no longer have authority to retransmit the signal of WVLA-TV.
4. During the first week of January 2012, I again contacted Bailey as described in the Complaint. On January 3, 2012, I sent a letter to Bailey advising it that continued retransmission of WVLA-TV without express consent violated federal law. A true and correct copy of that letter is attached as Exhibit C. On January 4, 2012, Mr. Bailey faxed a new offer to White Knight for carriage of WVLA-TV. On January 5, 2012, I informed Mr. Bailey that White Knight rejected his offer.
5. I declare under penalty of perjury that the facts contained herein and within the foregoing Complaint are true and correct to the best of my knowledge, information, and belief formed after reasonable inquiry, that the Complaint is well grounded in fact, that it is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose.



Duane Lammers
1001 Boardwalk Springs Place
Suite 111
O'Fallon, MO 63368

Dated: January 19, 2012

EXHIBIT C

Letter to Bailey Cable TV Inc.

ADVANCE NOTICE OF POTENTIAL INFRINGEMENT

January 3, 2012

VIA FACSIMILE

Audubon Cablevision Inc

Re: WVLA-TV

Dear Mr. Bailey:

As you know, White Knight Broadcasting ("White Knight") is the owner and operator of WVLA-TV, Baton Rouge, LA. As you also know, Audubon Cablevision has been retransmitting the digital signal of WVLA-TV without the express consent from White Knight required by federal law. Despite extensive and aggressive efforts to resolve this matter with you, Audubon Cablevision apparently continues to retransmit WVLA-TV's signal today. We therefore are forced to send Audubon Cablevision this Advance Notice of Copyright Infringement.

Quite simply, the retransmission of WVLA-TV's digital signal is illegal. By continuing to retransmit WVLA-TV's signal without the "express consent" of White Knight, Audubon Cablevision knowingly and willfully has violated the retransmission consent provisions of Section 325(b) of the Communications Act of 1934, as amended, and Section 76.64 of the FCC's rules. Furthermore, because Audubon Cablevision's retransmission of the signal does not comply with the FCC's rules, such carriage does not qualify for the statutory cable retransmission copyright license under 17 U.S.C. Section 111. Accordingly, Audubon Cablevision's carriage of WVLA-TV's digital signal also constitutes a willful act of copyright infringement.

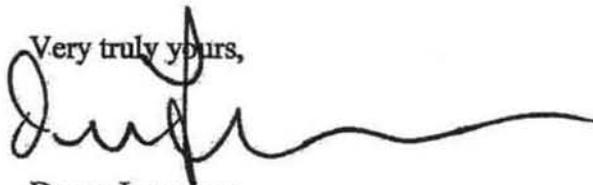
We hereby notify Audubon Cablevision that White Knight will seek all remedies available at the Federal Communications Commission and in federal court, including, without limitation, statutory damages and recovery of attorneys' fees and costs. By providing Audubon Cablevision with this Advance Notice of Potential Infringement, we establish, pursuant to 17 U.S.C. Section 411(b), our right as copyright owner of WVLA-TV's original programming to institute a cause of action for copyright infringement. In particular, we provide you with this notice of infringement of White Knight's original programming, including local newscasts and unscheduled news presentations, aired since January 1, 2012. This notice also applies to unscheduled news presentations, special presentations, and public affairs programs. We fully intend to secure full copyright protection for all such programming subsequent to airing by the station.

Just as we are certain that Audubon Cablevision aggressively enforces its rights against those who use its service without permission, White Knight aggressively pursues all available remedies to protect and preserve its intellectual property rights. While White Knight would have preferred to resolve this matter amicably, your continued retransmission of WVLA-TV's signal combined with a complete failure to respond to us confirms that Audubon Cablevision is not interested in resolving this matter at this time.

White Knight expressly reserves all of its rights in this matter including, without limitation, its rights to seek actual and punitive damages, injunctive relief, attorneys' fees and all other available legal and equitable remedies from the courts and the FCC.

Please direct all further communications about this matter *in writing* to Duane Lammers at 1001 Boardwalk Springs Place, Suite 111, O'Fallon, Missouri 63368.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Duane Lammers', with a long, wavy horizontal line extending to the right.

Duane Lammers

EXHIBIT D

Declaration of Anthony Malara

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

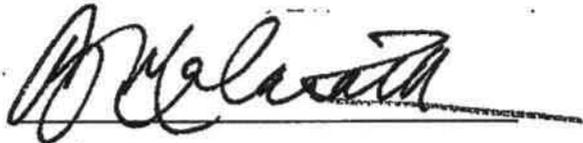
In the Matter of

Bailey Cable TV Company

Enforcement Complaint Concerning
WVLA-TV, Baton Rouge, Louisiana

DECLARATION OF ANTHONY MALARA

1. My name is Anthony J. Malara, III, and I am President of Knight Broadcasting of Baton Rouge License Corp.
2. I have reviewed the foregoing Enforcement Complaint and found the factual matters set forth therein to be true to the best of my knowledge and belief. In addition, to the best of my knowledge, information and belief formed after reasonable inquiry, the Enforcement Complaint is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and it is not interposed for any improper purpose. I declare under penalty of perjury that the foregoing is true and correct.



Anthony J. Malara, III
3316 Willow Glen Drive
Oak Hill, VA 20171

Dated: January 24, 2012

CERTIFICATE OF SERVICE

I certify that on this 25th day of January, 2012, I caused the foregoing Enforcement Complaint to be served by first-class mail, except where email is indicated, on the following:

William T. Lake*
Chief, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Michelle Carey*
Deputy Chief, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Mary Beth Murphy*
Chief, Policy Division, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
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Ronald Parver*
Assistant Chief, Policy Division, Media Bureau
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P. Michele Ellison*
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Federal Communications Commission
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Steven A. Broeckaert*
Deputy Chief, Policy Division, Media Bureau
Federal Communications Commission
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Washington, D.C. 20554

Bailey Cable TV
12189 Jackson Road
Saint Francisville, LA 70775

* via email



Cheryl Murphy