

STAMP & RETURN

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

In the Matter of
Trans-video Cable
Enforcement Complaint Concerning
WFFF-TV, Burlington, VT

FILED/ACCEPTED

MAY 17 2012

Federal Communications Commission
Office of the Secretary

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

ENFORCEMENT COMPLAINT

Smith Media License Holdings, LLC ("Licensee"), licensee of full power television station WFFF-TV, Burlington, Vermont ("WFFF"), by its attorneys, hereby files this Enforcement Complaint against Trans-video Cable ("Trans-video"). Trans-video currently retransmits the signal of WFFF on its cable system serving Northfield, Vermont (the "Community"), without the consent of Licensee in violation of Section 325(b)(1)(A) of the Communications Act of 1934, as amended (the "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). Licensee seeks an Order compelling Trans-video to comply with the law and imposing such sanctions on Trans-video 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 and recently fined a cable operator for retransmitting a television station without consent.⁴

The Communications Act requires Trans-video to obtain Licensee's consent to retransmit WFFF. Trans-video's cable system serving the Community indisputably is a multichannel video programming distributor within the meaning of Section 602 of the Communications Act.⁵ 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.⁶ Likewise, WFFF indisputably is 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.⁷ Nielsen Media Research, Inc. has assigned WFFF to the Burlington-Plattsburgh DMA, and the Trans-video system serves subscribers located within this DMA.⁸ Licensee properly elected retransmission consent for WFFF on the Trans-video system serving the Community for the

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 Implementation of the Cable Television and Consumer Protection and Competition Act of 1992: Broadcast Signal Carriage Issues, *Report and Order*, 8 FCC Rcd 2965, 3005 at para. 175 (1993).

⁴ Bailey Cable TV, Inc., *Notice of Apparent Liability for Forfeiture*, DA 12-420 (Med. Bur. rel. Mar. 16 2012); Bailey Cable TV, Inc., *Notice of Apparent Liability for Forfeiture*, DA 12-421 (Med. Bur. rel. Mar. 16 2012).

⁵ *See* 47 U.S.C. §§ 522(7), 522(13).

⁶ *See* List of Registered Vermont Cable Communities, available at <http://www.fcc.gov/mb/engineering/list/VT.xls> (last visited May 4, 2012) (showing Trans-video system registered as VT0054 in Northfield, Vermont).

⁷ *See* 47 U.S.C. §§ 153(5), 153(6); *see also* FCC File Nos. BLCDT-20070629AAM.

⁸ *See* BIA/Kelsey, *Investing in Television: Market Report 2011* at 95 (identifying DMA assignments applicable to the current carriage cycle).

2012-2014 carriage cycle on September 21, 2011 when it sent its retransmission consent election statement.⁹ Therefore, Trans-video must obtain Licensee's express, written consent to retransmit WFFF's signal on its cable system serving the Community.

Since April 19, 2012, Trans-video has not had Licensee's express, written consent to retransmit WFFF. Beginning on December 29, 2011, Licensee extended its grant of retransmission consent for WFFF to Trans-video while the parties engaged in retransmission consent negotiations. Between January 1, 2012 and April 13, 2012, Licensee granted good faith extensions of consent seven times. When Trans-video refused to negotiate in good faith over a period of three months, Licensee notified Trans-video the final extension of consent would expire on April 18, 2012.¹⁰ Thus, since April 19, 2012, Trans-video has not had Licensee's express, written consent to retransmit WFFF.

Despite no longer possessing Licensee's consent, Trans-video continued to retransmit WFFF's signal. On April 19, 2012, Station personnel confirmed that Trans-video continued to retransmit WFFF-TV.¹¹ Accordingly, Licensee immediately sent Trans-video an Advance Notice of Copyright Infringement, demanding that Trans-video cease retransmission of WFFF. Trans-video refused delivery of Licensee's letter.¹² On April 20, April 23, and May 1, Licensee again confirmed that Trans-video continued to knowingly and willfully retransmit WFFF's signal without consent,¹³ forcing Licensee to seek enforcement of its rights before the Commission. Indeed, WFFF's news manager was advised by Trans-Video that the operator had no intention of dropping WFFF and that the matter will go to litigation.¹⁴

⁹ See Exhibit A.

¹⁰ See Declaration of Ken Kaszubowski, attached hereto.

¹¹ See Declarations of Lesley Engle and David Freer, attached hereto.

¹² See Exhibit B.

¹³ See Declarations of David Freer, Dana Nahumck, and Alex Pastewski, attached hereto; see also Exhibit C, TV Listings Guide for Trans-video, available at <http://www.trans-video.net/channels.html> (last visited May 15, 2012).

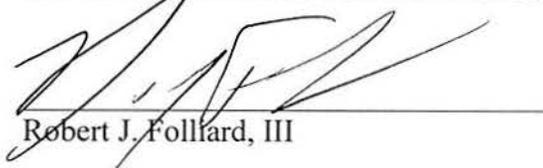
¹⁴ See Declaration of Lesley Engle, attached hereto.

CONCLUSION

Since April 19, 2012, Trans-video has retransmitted WFFF's signal on its cable systems without Licensee's express, written consent. Trans-video therefore knowingly and willfully violated the Communications Act and the Commission's rules. Licensee requests that the Bureau promptly issue an order directing Trans-video to come into compliance with its obligations with respect to WFFF's signal on all of its cable systems and imposing such sanctions on Trans-video as the Bureau deems appropriate.

Respectfully submitted,

SMITH MEDIA LICENSE HOLDINGS, LLC



Robert J. Follard, III

DOW LOHNES PLLC
1200 New Hampshire Ave., NW
Suite 800
Washington, DC 20036
202-776-2000

Its Attorney

May 17, 2012

Verification

To the best of my knowledge, information and belief formed after reasonable inquiry, this 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.



Robert J. Follard, III

May 17, 2012

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

In the Matter of

Trans-video Cable

Enforcement Complaint Concerning
WFFF-TV, Burlington, VT

DECLARATION OF IAN GUTHRIE

1. My name is Ian Guthrie, and I am Vice President, CFO & Treasurer of Smith Media License Holdings, LLC.
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.



Ian Guthrie
Vice President, CFO & Treasurer
Smith Media License Holdings, LLC
1215 Cole St.
St. Louis, MO 63106

Dated: May 14, 2012

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

_____)
In the Matter of)
Trans-video Cable)
Enforcement Complaint Concerning)
WFFF-TV, Burlington, VT)
_____)

DECLARATION OF LESLEY ENGLE

1. My name is Lesley Engle, and I serve as the News Manager for WFFF-TV ("WFFF").
2. I have read the foregoing Enforcement Complaint (the "Complaint"), and I am familiar with the contents thereof.
3. On April 19, 2012, I telephoned Trans-video Cable, on behalf of my grandmother, who lives in the Northfield, Vermont area.
4. I informed the Trans-video Cable telephone employee that I was concerned because I saw a posting on the Fox affiliates website saying Trans-video Cable would be dropping Fox programming. In response to my comment, the Trans-video Cable telephone employee said that they are not dropping Fox programming.
6. The Trans-video Cable telephone employee said that FOX44 (WFFF) is owned by a big company, who they pay per month, per subscriber and that this company is looking for a 700% increase. The Trans-video Cable telephone employee claimed that they have been trying to negotiate in good faith but that they are not budging from their position
8. I asked the Trans-video Cable telephone employee if the Fox programming was still on the air and was told that it was, and that Trans-video Cable has no intention of dropping it, indicating it will go to litigation.
9. 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.



Lesley Engle
News Manager, WFFF-TV
298 Mountain View Drive
Colchester, VT 05446
(802) 859-1344

Dated: May 14, 2012

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

_____))
In the Matter of)
)
Trans-video Cable)
)
Enforcement Complaint Concerning)
WFFF-TV, Burlington, VT)
_____)

DECLARATION OF DAVID FREER

1. My name is David Freer, and I serve as an Engineer for WFFF-TV ("WFFF").
2. I have read the foregoing Enforcement Complaint (the "Complaint"), and I am familiar with the contents thereof.
3. On April 19, 2012, I went to the Depot Square Pizzeria LLC located at 40 Depot Sq #2, in Northfield, Vermont.
4. I asked an employee if they had Trans-Video cable service at the pizzeria and the employee confirmed that the pizzeria had Trans-Video cable. I asked if he could change the station channel to see if local broadcast stations were coming in over the television. I observed WFFF airing on Channel 12 on the television set located at the pizzeria.
5. On April 19 and 23, 2012, I went to the Launderama Laundromat on the corner of Water Street and Wall Street in Northfield, Vermont.
6. On both dates, I observed WFFF airing on Channel 12 on the television set located at the Laundromat.
7. On both occasions, I noted that on the Wall Street side of the building, visible from the sidewalk, was an interface box which distributes cable into the Laundromat which clearly read "Property of Trans-Video Cable TV."
8. 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.



David Freer
Engineer, WFFF-TV
298 Mountain View Drive
Colchester, VT 05446
(802) 859-1344

Dated: May 14, 2012

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

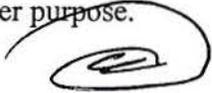
In the Matter of

Trans-video Cable

Enforcement Complaint Concerning
WFFF-TV, Burlington, VT

DECLARATION OF KEN KASZUBOWSKI

1. My name is Ken Kaszubowski (Ken Kasz), and I serve as Director of Operations for WFFF-TV ("WFFF").
2. I have read the foregoing Enforcement Complaint (the "Complaint"), and I am familiar with the contents thereof.
3. On April 16, 2012, I advised Trans-video Cable ("Trans-video") that since the parties had not reached an agreement for carriage of WFFF, effective April 19, 2012, Trans-video would no longer have authority to retransmit the signal of WFFF.
4. 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.



Ken Kaszubowski (Ken Kasz)
Director of Operations, WFFF-TV
298 Mountain View Drive
Colchester, VT 05446
(802) 859-1314

Dated: May 14, 2012

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

In the Matter of
Trans-video Cable
Enforcement Complaint Concerning
WFFF-TV, Burlington, VT

DECLARATION OF DANA NAHUMCK

1. My name is Dana Nahumck, and I am Director of Engineering for WFFF-TV ("WFFF").
2. I have read the foregoing Enforcement Complaint (the "Complaint"), and I am familiar with the contents thereof.
3. On May 1, 2012, at 12:25 p.m., I went to the Launderama Laundromat on the corner of Water Street and Wall Street in Northfield, Vermont.
4. I observed WFFF airing on Channel 12 on the television set located at the Laundromat.
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.



Dana Nahumck
Director of Engineering, WFFF-TV
298 Mountain View Drive
Colchester, VT 05446
(802) 660-9333, ext. 117

Dated: May 14 2012

EXHIBIT A

2011 Retransmission Consent Election Letters

CABLE-TELCO ELECTION NOTICE

CALL LETTERS	COMMUNITY OF LICENSE	DMA TO WHICH NIELSEN MEDIA RESEARCH ASSIGNED STATION IN 2009-10 NSI
WFFF	BURLINGTON, VT / PLATTSBURGH, NY	BURLINGTON, PLATTSBURGH
DTV CHANNEL (OVER THE AIR)	PRIMARY CHANNEL (VIRTUAL CHANNEL, E.G., 15.1)	LICENSEE NAME
43	44.1	SMITH MEDIA LICENSE HOLDINGS, LLC

This Cable Election Notice is sent this 21st day of September 2011 via Certified Mail/Return Receipt Requested (Receipt Number 7007 0710 0000 UNNO 6835) to the following:

Operator: Transvideo
 Address: 56 Depot Square, Unit 1
 Northfield, VT 05663

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 our current retransmission consent agreement and including those listed 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.

Further, we hereby notify you of our election not to renew, extend, or roll-over the term of any of retransmission consent agreement that may be in place between our companies at this time. 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: Ian Guthrie
 Address: Smith Media
 1205 Cole Street
 St. Louis, Missouri
 Phone: 314-853-7736
 Email: iguthrie@smithmediatv.com

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

Signature:
 Name/Title:


 VP/Group Manager

CABLE-TELCO ELECTION NOTICE

Exhibit A

CALL LETTERS	COMMUNITY OF LICENSE	LICENSEE
WFFF	BURLINGTON, VT / PLATTSBURGH, NY	Smith Media License Holdings, LLC

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

Northfield, VT

SENDER: COMPLETE THIS SECTION

COMPLETE THIS SECTION ON DELIVERY

- 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.

A. Signature *George Goodrich* Agent Addressee

B. Received by (Printed Name) _____ C. Date of Delivery *9/22/11*

1. Article Addressed to:
*TransVIDEO
56 Depot Sq, Unit 1
Northfield, VT 05063*

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

Attn: George Goodrich

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number
(Transfer from service label)

7007 0710 0000 6660 6835

Important
A record
is being
made

EXHIBIT B

Advance Notice of Copyright Infringement

ADVANCE NOTICE OF POTENTIAL INFRINGEMENT

April 19, 2012

VIA CERTIFIED MAIL (70070710000066606163)
VIA EMAIL (goodrich@trans-video.net)

George Goodrich
General Manager
Trans-video Cable
56 Depot Square
Northfield, VT 05663

Re: WFFF-TV Retransmission

Dear Mr. Goodrich:

Smith Media License Holdings, LLC ("Broadcaster") is the owner and operator of WFFF-TV, licensed to Burlington, VT/Plattsburgh, NY (the "Station"). We believe that Trans-video Cable has been retransmitting the signal of the Station after the expiration of the retransmission consent agreement and therefore without the express consent from Broadcaster required by federal law. We therefore are forced to send Trans-video Cable this Advance Notice of Copyright Infringement.

Quite simply, Trans-video Cable's continued retransmission of the Station's signals is illegal. By continuing to retransmit the Station without Broadcaster's "express consent," Trans-video Cable 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 Trans-video Cable'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, Trans-video Cable's carriage of Broadcaster's Station also constitutes a willful act of copyright infringement.

We hereby notify Trans-video Cable that Broadcaster 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 Trans-video Cable with this Advance Notice of Potential Infringement, we establish, pursuant to 17 U.S.C. Section 411(b), our right as copyright owner of the Station's original programming to institute a cause of action for copyright infringement. In particular, we provide you with this notice of infringement

Advance Notice of Potential Infringement
Page 2

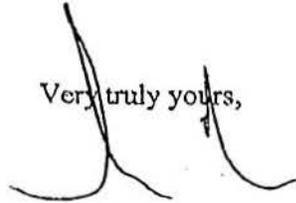
of Broadcaster's original programming aired, beginning on January 1, 2012, including all local news presentations.

Carriage of the Station's signal without consent is a serious violation of federal law and subjects Trans-video Cable to substantial liability under the Communications Act independent of any copyright liability. Indeed, the FCC recently declared that such illegal carriage could subject a cable operator to a potential forfeiture of \$7,500 per day. See *Bailey Cable TV, Inc. Notice of Apparent Liability for Forfeiture*, 27 FCC Rod. 2631 (Med. Bur. 2012). For your reference, I have attached to this correspondence a copy of the FCC's decision in *Bailey Cable*.

Broadcaster 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 only*.

Very truly yours,



Steve Doerr
Vice President and Group Manager –
New York/New England
Smith Media, LLC
WFFF-TV

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Bailey Cable TV, Inc.)	MB Docket No. 12-34
)	CSR No. 8584-C
)	NAL/Acct. No.: MB-201241410023
)	FRN: 0011409034

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 16, 2012

Released: March 16, 2012

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability For Forfeiture (“NAL”), we find that Bailey Cable TV, Inc. (“Bailey”) apparently willfully and repeatedly violated Section 325 of the Communications Act of 1934, as amended (the “Act”), and Section 76.64 of the Commission’s rules, by retransmitting the signal of a broadcasting station without “the express authority” of the originating station.¹ Based upon our review of the facts, we find Bailey apparently liable for a monetary forfeiture in the amount of fifteen thousand dollars (\$15,000).

II. BACKGROUND

2. Communications Corporation of America (“ComCorp”) is the parent company of the licensee of full-power television station WGMB-TV, Baton Rouge, Louisiana. ComCorp filed a complaint with the Commission, alleging that Bailey retransmitted without consent the signal of WGMB-TV on its cable system serving St. Francisville, Louisiana; Angola, Louisiana; and certain unincorporated areas within West Feliciana Parish, Louisiana (the “Communities”).²

3. Bailey’s cable system serving the Communities is a multichannel video programming distributor (“MVPD”), and WGMB-TV is a broadcasting station within the Baton Rouge Designated Market Area (“DMA”) served by Bailey.³ For the 2012-2014 carriage cycle, for the Bailey cable system serving the Communities, ComCorp elected retransmission consent for WGMB-TV.⁴ Although Bailey’s retransmission consent agreement with ComCorp expired on December 31, 2011, Bailey continued

¹ 47 U.S.C. § 325(b)(1)(A); 47 C.F.R. § 76.64(a).

² See Enforcement Complaint Concerning WGMB-TV, Baton Rouge, Louisiana (dated Jan. 23, 2012) (“WGMB-TV Complaint”). Concurrently with this NAL, we are issuing a Notice of Apparent Liability For Forfeiture pertaining to a similar complaint filed by Knight Broadcasting of Baton Rouge License Corp. (“White Knight”), the licensee of full-power television station WVLA-TV, Baton Rouge, Louisiana, against Bailey. See Enforcement Complaint Concerning WVLA-TV, Baton Rouge, Louisiana (dated Jan. 25, 2012) (“WVLA-TV Complaint”). Bailey was formerly known as Audubon Cablevision. See WVLA-TV Complaint at 1.

³ WGMB-TV Complaint at 2.

⁴ *Id.* at 2-3 and Ex. A.

carrying WGMB-TV despite the absence of an extension or renewal agreement.⁵ ComCorp informed Bailey, both before and after the expiration of the retransmission consent agreement, that Bailey was not permitted to retransmit WGMB-TV once the agreement expired.⁶ ComCorp seeks an order directing Bailey to comply with the law and imposing appropriate sanctions for its knowing, deliberate, and continuing violations.⁷

4. In response, Bailey does not refute that it retransmitted WGMB-TV without express, written consent.⁸ Rather, Bailey argues that it faced a “dramatic increase” in requested retransmission consent fees, and states that it receives the signal by antenna rather than satellite or the Internet.⁹ Bailey claims that ComCorp is “using [the Commission] as a tool to negotiate a dramatic increase in rates” and it requests that the Commission require the fair negotiation of a reasonable rate.¹⁰ On February 3, 2012, following a telephone conference with Commission staff and the parties, Bailey and ComCorp executed an agreement extending the term of their retransmission consent agreement.¹¹

III. DISCUSSION

5. As described below, we conclude that Bailey is apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000) for its apparent willful and repeated retransmission of WGMB-TV’s signal without the express authority of the originating station. Under Section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹² Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the

⁵ *Id.* at 3. ComCorp claims that it “made every effort to extend the Agreement with Bailey, but Bailey refused to engage in serious negotiations.” *Id.*

⁶ *Id.* at 3-4. ComCorp alleges that its designated negotiator contacted Bailey on December 30, 2011, “and advised it that at midnight on December 31, 2011, the Agreement would expire and Bailey would no longer have authority to retransmit the programming for WGMB-TV.” *Id.* at 3. On January 3, 2012, ComCorp faxed and e-mailed Bailey a letter stating that its continuing carriage of WGMB-TV was in violation of federal law. *Id.* at 4 and Ex. C.

⁷ *Id.* at 1.

⁸ Bailey Cable TV, Inc. Answer to Enforcement Complaint Concerning WVLA-TV, Baton Rouge, Louisiana (dated Jan. 30, 2012) (“Bailey Answer”). Bailey informed the Commission that it did not intend to file a separate answer to the WGMB-TV Complaint, and that the same arguments would apply. During a telephone conference with Commission staff, ComCorp and White Knight on February 3, 2012, Bailey made the same arguments with regard to both stations. Accordingly, we will treat the Bailey Answer as pertaining to the WGMB-TV Complaint as well as the WVLA-TV Complaint, for purposes of this *NAL*.

⁹ *Id.* at 1. Bailey also claims that it erroneously received a contract for the Hartford-New Haven area that covered all broadcast networks. *See id.* at 1 and Ex. A. Given that the contract clearly labeled two fictitious stations in the Hartford-New Haven DMA as examples, this argument fails. *See id.* at Ex. A.

¹⁰ *See id.* at 1.

¹¹ *See* Letter from John R. Feore, Jr. and Robert J. Folliard, III, Counsel to Communications Corporation of America, to Steven A. Broecker, Senior Deputy Chief, Policy Division, Media Bureau, at 1 (Feb. 28, 2012). Bailey erroneously indicated that the date of the telephone conference was February 2, 2012. *See* Letter from David A. Bailey, Bailey Cable TV, Inc., to Steven A. Broecker, Senior Deputy Chief, Policy Division, Media Bureau (Feb. 27, 2012).

¹² *See* 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(2).

law.¹³ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹⁴ and the Commission has so interpreted the term in the Section 503(b) context.¹⁵ The Commission may also assess a forfeiture for violations that are merely repeated and not willful.¹⁶ “Repeated” means that the act was committed or omitted more than once or lasts more than one day.¹⁷ In order to impose a forfeiture, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such penalty should be imposed or why it should be reduced and must include a detailed factual statement and pertinent documents and affidavits as support.¹⁸ The Commission will then issue a forfeiture if it finds, by a preponderance of the evidence, that the person has willfully or repeatedly violated the Act or a Commission rule.¹⁹

6. Section 325 of the Act requires cable systems and other MVPDs to obtain “the express authority of the originating station” to retransmit a broadcasting station’s signal.²⁰ This requirement is codified in Section 76.64 of the Commission’s rules, which further requires retransmission consent agreements to be in writing and to “specify the extent of the consent being granted.”²¹ The Commission previously stated that if an MVPD retransmits a television signal without consent, Commission intervention would be consistent with precedent and “properly documented retransmission of a television signal without consent would be grounds for imposition of a forfeiture.”²²

7. We find that Bailey apparently violated Section 325 of the Act and Section 76.64 of the Commission’s rules by retransmitting WGMB-TV’s signal without the required consent. Bailey does not dispute ComCorp’s allegations that it retransmitted WGMB-TV’s signal despite the expiration of the retransmission consent agreement and the failure to enter into an extension or renewal agreement.²³ Bailey objects to the increase in the retransmission consent fees requested by ComCorp,²⁴ but such an increase does not justify an MVPD’s retransmission of a broadcasting station’s signal without the originating station’s express authority. We also find irrelevant to this matter Bailey’s statement that it

¹³ 47 U.S.C. § 312(f)(1).

¹⁴ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁵ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹⁶ See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, ¶ 10 (2001) (“*Callais Cablevision, Inc.*”) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage).

¹⁷ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

¹⁸ See 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

¹⁹ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (forfeiture paid).

²⁰ 47 U.S.C. § 325(b)(1)(A). Although there are certain exceptions to this requirement, including for local commercial stations that have elected to assert their mandatory carriage rights, no exceptions apply to the present situation. See WGMB-TV Complaint at 2 n. 1; 47 U.S.C. §§ 325(b)(1)(B), 534(b).

²¹ 47 C.F.R. § 76.64(a), (j).

²² *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, Report and Order, 8 FCC Rcd 2965, 3005, ¶ 175 (1993).

²³ Bailey Answer.

²⁴ See *id.* at 1.

receives the signal “free over the air to antenna receivers.”²⁵ We emphasize that the cable operator has discretion to decide whether to enter into a retransmission consent agreement, but in the absence of such an agreement, the Act and the Commission’s rules prohibit retransmission of the station’s signal. Although ComCorp informed Bailey that its retransmission of WGMB-TV was a violation of federal law,²⁶ Bailey continued impermissibly retransmitting the station’s signal from January 1, 2012 until February 3, 2012.

8. Based upon the evidence before us, and in view of the applicable law and Commission precedent, we find that Bailey apparently willfully and repeatedly violated Section 325 of the Act and Section 76.64 of the Commission’s rules. The Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Commission’s rules specify a base forfeiture amount of seven thousand five hundred dollars (\$7,500) for each violation of the cable broadcast carriage rules.²⁷ In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act and Section 1.80 of the Commission’s rules,²⁸ which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.²⁹ The base forfeiture amount for the present matter would be calculated as follows:

$$\$7,500 \text{ base forfeiture} \times 34 \text{ days} = \$255,000 \text{ total base forfeiture}$$

During our investigation, Bailey submitted financial information which, after our review, establishes that a \$255,000 forfeiture would place the company in extreme financial hardship, and would represent a significant percentage of Bailey’s gross revenues. Accordingly, we act within our discretion to reduce the proposed forfeiture. With regard to an individual’s or entity’s inability to pay the forfeiture, the Commission has determined that, in general, gross revenues are the best indicator of an inability to pay a forfeiture.³⁰ Having reviewed Bailey’s submitted documentation (including gross revenue figures), and after applying the *Forfeiture Policy Statement*, Section 1.80 of the rules, and the statutory factors to the instant case, we conclude that Bailey is apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000). We caution, however, that a party’s inability to pay is only one factor in our forfeiture calculation analysis, and is not dispositive.³¹ We have previously rejected inability to pay claims in cases

²⁵ See *id.*

²⁶ WGMB-TV Complaint at 3-4 and Ex. C.

²⁷ See *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17115 (1997), *recons. denied* 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”); 47 C.F.R. § 1.80(b).

²⁸ See 47 U.S.C. § 503(b)(2)(E); 47 C.F.R. § 1.80(b)(4).

²⁹ See *id.*

³⁰ See *PJB Communications of Virginia, Inc.*, Forfeiture Order, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator’s gross revenues); *Local Long Distance, Inc.*, Forfeiture Order, 15 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator’s gross revenues); *Hoosier Broadcasting Corporation*, Forfeiture Order, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator’s gross revenues).

³¹ See 47 U.S.C. § 503(b)(2)(E) (requiring Commission to take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require).

of repeated or otherwise egregious violations.³² Therefore, future violations of this kind may result in significantly higher forfeitures that may not be reduced due to Bailey's financial circumstances.

IV. ORDERING CLAUSES

9. **ACCORDINGLY, IT IS ORDERED**, pursuant to Section 503(b) of the Act,³³ and Sections 0.61, 0.283, and 1.80 of the Commission's rules,³⁴ that Bailey Cable TV, Inc. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of fifteen thousand dollars (\$15,000) for apparently willfully and repeatedly violating Section 325 of the Communications Act of 1934, as amended, and Section 76.64 of the Commission's rules.

10. **IT IS FURTHER ORDERED**, pursuant to Section 1.80 of the Commission's rules, that within thirty (30) days of the release of this *NAL*, Bailey Cable TV, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture, including a detailed factual statement in support of its request for reduction or cancellation of the proposed forfeiture, and supported by pertinent documents and affidavits.

11. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Account number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, Missouri 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the *NAL*/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for payment of the full amount under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Bailey shall also send electronic notification on the date said payment is made to Diana.Sokolow@fcc.gov.

12. The response, if any, must be mailed to Diana Sokolow, Policy Division, Media Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, D.C. 20554, and **SHALL INCLUDE** the *NAL*/Acct. number referenced above. In addition, to the extent practicable, a copy of the response, if any, should also be transmitted via e-mail to Diana.Sokolow@fcc.gov.

³² *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840 (Enf. Bur., Western Region 2011) (holding that violator's repeated acts of malicious and intentional interference outweigh evidence concerning his ability to pay); *Hodson Broadcasting Corp.*, Forfeiture Order, 24 FCC Rcd 13699 (Enf. Bur. 2009) (holding that permittee's continued operation at variance with its construction permit constituted an intentional and continuous violation, which outweighed permittee's evidence concerning its ability to pay the proposed forfeitures).

³³ See 47 U.S.C. § 503(b).

³⁴ See 47 C.F.R. §§ 0.61, 0.283, and 1.80.

13. **IT IS FURTHER ORDERED** that the complaint in this proceeding **IS GRANTED** to the extent indicated herein, and the complaint proceeding **IS HEREBY TERMINATED**.³⁵

14. **IT IS FURTHER ORDERED** that a copy of this *NAL* shall be sent, by First Class Mail and Certified Mail-Return Receipt Requested, to David A. Bailey, Bailey Cable TV, Inc., 807 Church Street, Port Gibson, MS 39150.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief
Media Bureau

³⁵ For purposes of the forfeiture proceeding initiated by this *NAL*, Bailey Cable TV, Inc. shall be the only party to this proceeding.



WFFF-TV

298 Mountain View Drive
Colchester, VT 05446

Transvideo
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Northfield, VT 05663

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 or PO Box No. 56 Depot Square Unit 1
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 Northfield, VT 05663
 PS Form 3800, August 2006 See Reverse for Instructions

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9779 0999 0000 0720 2002



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<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 X <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>1. Article Addressed to: Attn: George Goodrich Transvideo 56 Depot Square Unit 1 Northfield, VT 05663</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>2. Article Number (Transfer from service label) 7007 0710 0000 6660 6163</p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
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Colchester, VT 05446

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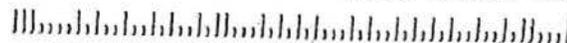
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Unit 1
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7097071006006606163	First-Class Mail®	Delivered	April 23, 2012, 4:12 pm	COLCHESTER, VT 05440	Expected Delivery By: April 20, 2012 Certified Mail™ Return Receipt
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		Depart USPS Sort Facility	April 21, 2012	WHITE RIVER JUNCTION, VT 05001	
		Processed at USPS Origin Sort Facility	April 21, 2012, 5:54 am	WHITE RIVER JUNCTION, VT 05001	
		Refused	April 20, 2012, 9:13 am	NORTHFIELD, VT 05663	
		Arrival at Unit	April 20, 2012, 6:57 am	NORTHFIELD, VT 05663	
		Dispatched to Sort Facility	April 19, 2012, 5:43 pm	WINOOSKI, VT 05404	
		Acceptance	April 19, 2012, 4:46 pm	WINOOSKI, VT 05404	

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(WFAA)

Exhibit C

Trans-video Cable TV Channel Lineup (as of 5-15-12)



- Dependable, personal service
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Cable TV Channel Line-up



Effective January 2012 and subject to change.

Local digital simulcast channels noted in blue. High-Definition channels are noted in red (and will require an HD-compatible television).

Basic Cable

- 2 Home & Garden TV (HGTV)
- 3 WCAX (CBS) Burlington, VT
- 3.1 WCAX (CBS) HD simulcast
- 3.2 WCAX (CBS) WCAXtra
- 4 WVNY (ABC) Burlington, VT
- 22.1 WVNY (ABC) HD simulcast
- 5 WPTZ (NBC) Plattsburg, NY
- 5.1 WPTZ (NBC) HD simulcast

- 5.2 WPTZ (NBC) THIS-TV
- 6 CBC Montreal
- 7 Community Channel
- 8 Turner Broadcasting (TBS)
- 9 Animal Planet
- 10 Home Shopping Network
- 11 VPT (PBS) Burlington, VT
- 33.1 VPT (PBS) HD simulcast
- 33.2 VPT (PBS) SD simulcast
- 33.3 VPT (PBS) Create
- 33.4 VPT (PBS) World
- 12 WFFF (FOX) Burlington, VT
- 44.1 WFFF (FOX) HD simulcast
- 44.2 WFFF (FOX) CW Network
- 13 The Learning Channel
- 14 Common View
- 15 Discovery
- 16 Travel Channel

Cable Plus

- 17 TV Guide
- 18 WSBK Boston
- 19 WPIX New York, NY
- 20 WGN Chicago
- 21 Discovery Health
- 22 ABC Family
- 23 Cable Network News (CNN)
- 24 FOX News
- 25 ESPN Classic
- 26 ESPN
- 27 ESPN 2
- 28 NESN
- 29 Comcast Sports Network NE
- 30 American Movie Classics (AMC)
- 31 Turner Classic Movies (TCM)
- 32 Lifetime Movie Network

- 33 Nickelodeon
- 34 Cartoon Network
- 35 Disney
- 36 Music Television (MTV)
- 37 VH-1
- 38 Country Music Television
- 39 TV Land
 - 40 CNBC
 - 41 Lifetime
 - 42 USA Network
 - 43 History
 - 44 Arts & Entertainment (A&E)
 - 45 Bravo
 - 46 TNT
 - 47 The Weather Channel
 - 48 E! Entertainment
 - 49 Sci Fi Channel
 - 50 Tru-TV
 - 51 Comedy Central
 - 52 Food Network
 - 53 SPEED
 - 54 FX
 - 55 Spike
 - 56 Women's Entertainment (WE)
 - 57 NBC Sports Net
 - 58 National Geographic
 - 59 Hallmark
 - 76 Outdoor Channel
 - 78 QVC

Digital Cable

- 100 Science Channel
- 101 Planet Green
- 103 OWN
- 105 The HUB
- 106 PBS Kids Sprout

- 107 Nick Jr.
- 108 Nick Toons
- 109 Disney XD
- 111 TeenNick
- 112 RFD-TV
- 114 CLOO
- 115 Investigative Discovery
- 116 Military Channel
- 117 History
- 118 History International
- 119 Biography
- 120 G4
- 125 Arts & Entertainment (A&E)
- 127 Chiller
- 128 FOX Movie Channel
- 129 Nat Geo Wild
- 130 FOX Soccer
- 132 ESPN News
- 133 ESPN2
- 134 ESPNU
- 135 Versus
- 136 HRTV
- 137 ION
- 138 Golf
- 139 Sportsman's Channel
- 140 Fit TV
- 145 Do it Yourself
- 146 Cooking Channel
- 147 E! Style
- 150 BBC America
- 151 Smithsonian Channel
- 152 MSNBC
- 155 MTV2
- 156 MTV Hits
- 157 GAC
- 160 VH-1 Classic Rock
- 161 VH-1 Soul
- 162 Fuse

- 168 Pure Country (CMT)
- 170 Turner Classic Movies (TCM)
- 171 Sundance
- 172 Independent Film Channel
- 173 Halogen
- 174 Lifetime Movie
- 175 Oxygen
- 176 Fox Business Channel (FBC)
- 178 Trinity Broadcasting
- 186 Game Show Network (GSN)
- 190 C-Span
- 191 C-Span2
- 300 A & E HD
- 301 Velocity
- 302 History HD
- 310 HGTV HD
- 311 Food Network HD
- 315 National Geographic HD
- 320 STARZ HD
- 321 Universal HD
- 325 NESN HD
- 326 ESPN HD
- 327 ESPN2 HD
- 330 WCAX HD
- 331 WPTZ HD
- 332 WFFF HD
- 333 WVNY HD
- 334 WVPT HD

Digital Music

- 901 DMX-Beautiful Instruments
- 902 DMX-Jazz Vocal Blend
- 903 DMX-Hottest Hits
- 904 DMX-Modern Country
- 905 DMX-Alt Rock
- 906 DMX-Adult Contemporary

- 907 DMX-Lite Classical
- 908 DMX-Rock & Roll Oldies
- 909 DMX-Classic Rock
- 910 DMX-Urban Beat
- 911 DMX-Urban Adult Contemporary
- 912 DMX-Rap
- 913 DMX-Jazz
- 914 DMX-Blues
- 915 DMX-Gospel
- 916 DMX-Classical
- 917 DMX-Subterranean
- 918 DMX-Symphonic
- 919 DMX-Coffeehouse Rock
 - 920 DMX-Dance
 - 921 DMX-Contemporary Christian
 - 922 DMX-Album Rock
 - 923 DMX-Hard Rock
 - 924 DMX-80's Hits
 - 925 DMX-70's Hits
 - 926 DMX-Classic R & B
 - 927 DMX-Traditional Country
 - 928 DMX-Soft Hits
 - 929 DMX-Retro Disco
 - 930 DMX-Groove Lounge
 - 931 DMX-Big Band/Swing
 - 932 DMX-Smooth Jazz
 - 933 DMX-New Age
 - 934 DMX-Holidays & Happenings
 - 935 DMX-Great Standards
 - 936 DMX-Malt Shop Oldies
 - 937 DMX-Reggae
 - 938 DMX-Children's

Movie Channels

- 200 HBO HBO
- 201 HBO HBO 2

202 HBO	HBO Signature
203 HBO	HBO Zone
204 HBO	HBO Comedy
205 HBO	HBO Family
220 Cinemax	Cinemax
221 Cinemax	More Max
222 Cinemax	Thriller Max
223 Cinemax	Action Max
230 Showtime/TMC/FLIX	Showtime
231 Showtime/TMC/FLIX	Showtime 2
232 Showtime/TMC/FLIX	Showtime Next
233 Showtime/TMC/FLIX	Showtime Showcase
234 Showtime/TMC/FLIX	Showtime Extreme
235 Showtime/TMC/FLIX	Showtime Women
236 Showtime/TMC/FLIX	Showtime Family Zone
250 Showtime/TMC/FLIX	The Movie Channel
251 Showtime/TMC/FLIX	The Movie Channel XTRA
255 Showtime/TMC/FLIX	FLIX
260 Starz/Encore	Starz
261 Starz/Encore	Starz Cinema
262 Starz/Encore	Starz Edge
263 Starz/Encore	Starz Kids & Family
264 Starz/Encore	Starz Comedy
280 Starz/Encore	Encore
281 Starz/Encore	Encore Love
282 Starz/Encore	Encore Drama
283 Starz/Encore	Encore Action
284 Starz/Encore	Encore Mystery
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CERTIFICATE OF SERVICE

I certify that on this 17th day of May, 2012, I caused the foregoing Enforcement Complaint to be served by email and first-class mail where indicated on the following:

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

P. Michele Ellison
Chief, Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Michelle Carey
Deputy Chief, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
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George Goodrich*
General Manager
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Northfield, VT 05663
goodrich@trans-video.net

* also via first-class mail


Rayya Khalaf