

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

_____))
In the Matter of))
East Texas Cable))
Enforcement Complaint Concerning))
KDAF(TV), Dallas, Texas))
_____))

MB Docket 12-__
CSR _____

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

ENFORCEMENT COMPLAINT

Tribune Broadcasting Company, Debtor-in-Possession ("Tribune"), licensee of full-power television station KDAF(TV), Dallas, Texas, by its attorneys, hereby files this Enforcement Complaint against East Texas Cable ("East Texas"). Since January 1, 2012, East Texas has retransmitted without Tribune's consent the signal for KDAF(TV) on its cable systems serving communities in Canton and Smith, Texas (the "Communities") in the Dallas-Fort Worth Designated Market Area ("DMA") and the Tyler-Longview DMA 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). Tribune seeks an Order compelling East Texas to comply with the law and imposing such sanctions on East Texas as the Bureau deems appropriate for the operator's knowing, deliberate, and continuing violations of the law.

ARGUMENT

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 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 East Texas to obtain Tribune’s consent to retransmit KDAF(TV). East Texas’s 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, KDAF(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 KDAF(TV) to the Dallas-Fort Worth DMA.⁷ Canton, Texas is within the Dallas-Fort Worth DMA and Smith, Texas is within the Tyler-Longview DMA. For the East Texas System within the Dallas-Fort Worth DMA, Tribune properly elected retransmission consent for KDAF(TV) for the 2012-2014 carriage cycle.⁸ For

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 Texas Cable Communities, *available at* <http://www.fcc.gov/mb/engineering/list/TX.xls> (last visited June 13, 2012) (showing East Texas Cable systems registered as TX1160 in Canton, Texas; TX1888 in unincorporated area of Smith, Texas).

⁶ *See* 47 U.S.C. §§ 153(5), 153(6); *See* FCC File Number BLCDDT-20091218ACR.

⁷ *See* BIA/Kelsey, *Investing in Television: Market Report 2011* at 5 (identifying DMA assignments applicable to the current carriage cycle).

⁸ *See* Exhibit A.

the Community within the Tyler-Longview DMA, KDAF(TV) automatically defaults to retransmission consent status.⁹ Therefore, for all of the Communities, East Texas must obtain Tribune's express, written consent to retransmit KDAF(TV)'s signal on its Systems. In December 2011, Tribune sent East Texas a proposal for retransmission. East Texas never responded to the proposal. After multiple attempts to reach East Texas by phone between December 2011 and May 2012, on May 10, 2012, Tribune sent a revised retransmission proposal to East Texas.¹⁰ Tribune never received a response to the phone calls or either proposal from East Texas.

Therefore, East Texas does not have Tribune's consent to retransmit KDAF(TV) on its Systems, yet East Texas apparently continues to retransmit KDAF(TV)'s signal on its Systems.¹¹ East Texas's continued retransmission without consent violates the Communications Act and the Commission's rules. In a final attempt to resolve this matter before filing this Complaint, on May 31, 2012, Tribune sent another written notice to East Texas to inform it that East Texas's continued retransmission of KDAF(TV)'s signal violates federal law.¹² East Texas has not responded to that letter or any of Tribune's other inquiries leaving Tribune little choice but to enforce its rights before the Commission.

CONCLUSION

Since January 1, 2012, East Texas has retransmitted KDAF(TV)'s signal on its cable systems without Tribune's express, written consent. East Texas therefore knowingly and willfully violated the Communications Act and the Commission's rules. Tribune requests that the Bureau promptly issue an order directing East Texas to come into compliance with its

⁹ See 76.64(a).

¹⁰ See Exhibit B.

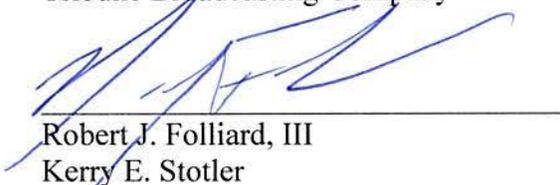
¹¹ See TV Listings Guide for East Texas Cable, at <http://www.etcable.net/Basic.html> (last visited June 18, 2012); Exhibit C.

¹² See Exhibit D.

obligations with respect KDAF(TV)'s signal on all of the Systems and imposing such sanctions on East Texas as the Bureau deems appropriate.

Respectfully submitted,

Tribune Broadcasting Company



Robert J. Folliard, III
Kerry E. Stotler

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

Its Attorneys

June 18, 2012

EXHIBIT A

September 6, 2011 Retransmission Consent Election Notice

TRIBUNE

BROADCASTING

435 N Michigan Avenue – Chicago, IL - 60611

September 6, 2011

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

East Texas Cable
Attn: Jim Roby- President
24285 State Hwy 64 E
Canton, TX 75103

Re: Election Notice

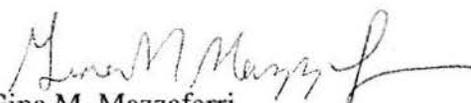
Dear Ladies and Gentlemen:

Tribune Broadcasting Company (“Broadcaster”) provides East Texas Cable (“Operator”) with this notice pursuant to Section 325 of the Communications Act of 1934, as amended, and Section 76.64(f) of the Rules and Regulations of the Federal Communications Commission. Broadcaster is the ultimate owner of the television stations identified in Attachment A hereto (each, a “Station”).

For the period January 1, 2012 through December 31, 2014, Broadcaster hereby elects **RETRANSMISSION CONSENT** with respect to the primary video stream of each such Station’s digital signal on each of Operator’s multichannel video programming distribution systems in each Station’s respective market, as identified in Attachment A, including but not limited to those multichannel video programming distribution systems identified in or covered by Broadcaster’s retransmission consent agreement with Operator and/or listed in Attachment B.

Please direct any questions or correspondence to me at the address on this letter.

Very truly yours,


Gina M. Mazzaferri
SVP, Administration
& Chief Financial Officer

Attachment
cc (by e-mail): Public Inspection Files

ATTACHMENT A**TRIBUNE BROADCASTING STATIONS**

Licensee Name	Station	DMA	Community of License
WPIX, Inc.	WPIX(TV)	New York	New York, NY
KTLA Inc.	KTLA(TV)	Los Angeles	Los Angeles, CA
WGN Continental Broadcasting Company	WGN-TV	Chicago	Chicago, IL
Tribune Television Company	WPHL-TV	Philadelphia	Philadelphia, PA
Tribune Television Company	KDAF(TV)	Dallas	Dallas, TX
WDCW Broadcasting, Inc.	WDCW(TV)	Washington	Washington, DC
KIAH Inc.	KIAH(TV)	Houston	Houston, TX
Tribune Television Holdings, Inc.	KZJO(TV)	Seattle-Tacoma	Seattle, WA
Tribune Television Northwest, Inc.	KCPQ(TV)	Seattle-Tacoma	Tacoma, WA
Channel 39, Inc.	WSFL-TV	Miami-Fort Lauderdale	Miami, FL
KWGN Inc.	KWGN-TV	Denver	Denver, CO
Channel 40, Inc.	KTXL(TV)	Sacramento-Stockton-Modesto	Sacramento, CA
KPLR, Inc.	KPLR-TV	St. Louis	St. Louis, MO
Tribune Broadcast Holdings, Inc.	KRCW-TV	Portland	Salem, OR
Tribune Television Company	WXIN(TV)	Indianapolis	Indianapolis, IN
Tribune Broadcast Holdings, Inc.	WTTV(TV)	Indianapolis	Bloomington, IN
Tribune Broadcast Holdings, Inc.	WTTK (TV) (satellite WTTV(TV))	Indianapolis	Kokomo, IN
KSWB Inc.	KSWB-TV	San Diego	San Diego, CA
Tribune Television Company	WTIC-TV	Hartford-New Haven	Hartford, CT
WCCT, Inc.	WCCT-TV	Hartford-New Haven	Waterbury, CT
Tribune Television Company	WPMT(TV)	Harrisburg-Lancaster-Lebanon-York	York, PA
Tribune Television Holdings, Inc.	WXMI(TV)	Grand Rapids-Kalamazoo-Battle Creek	Grand Rapids, MI
Tribune Television New Orleans, Inc.	WGNO(TV)	New Orleans	New Orleans, LA
Tribune Television New Orleans, Inc.	WNOL-TV	New Orleans	New Orleans, LA

ATTACHMENT B

East Texas Cable SYSTEMS CABLE SYSTEMS

Station	Head End
KDAF	CANTON

Exhibit B

May 10, 2012 Retransmission Proposal

TRIBUNE

BROADCASTING

May 10, 2012

CONFIDENTIAL MATERIAL REDACTED FOR INCLUSION IN FCC COMPLAINT

East Texas Cable
301 E Hwy 243 #103
Canton, TX 75103

To Whom it May Concern:

Outlined below is our proposal for retransmission agreement between East Texas Cable and Tribune Broadcasting Company. Rates and terms of this proposal are good for 10 business days from the above date.

Term: January 1, 2012 through December 31, 2014

Broadcast Stations: In Market:
KDAF – CW Dallas

Broadcast Rates: Cash consideration for in-DMA Stations affiliated with CW network:
2012 - [REDACTED] per sub per month
2013 - [REDACTED] per sub per month
2014 - [REDACTED] per sub per month

Broadcast Carriage: All in-DMA Systems will carry the down converted primary feed of the above Tribune Stations. Any in-DMA System that carries any other station in HD format will also carry the above Tribune Stations' HD channels in HD and all multicast channels in SD.

Channel Position: Current position for down converted signals. Multicast channel positions selected by operator in same neighborhood as other multicast channels or programming of same genre; provided that operator may not discriminate against Tribune Stations.

If this is acceptable, please indicate your agreement by signing and returning this letter to my attention.

Sincerely,

Kevin Connor
SVP Affiliate Sales

Agreed:
East Texas Cable

By: _____
Name:
Title:

Exhibit C

East Texas Cable Channel Lineup

SUPER BASIC PACKAGE

Includes all the *STANDARD STATIONS* Plus 9 Additional Stations

CH#	STATION	CH#	STATION
2	Day Star	31	LIF - Lifetime
3	TV Data	32	DSC - Discovery
4	KDFW Fox-Dallas	33	HIS - History Channel
5	KXAS (5) NBC Ft. Worth	34	TBS - Turner Broadcasting
6	Community Access TV	35	SPIKE - Spike Network
7	KLTV (7) ABC Tyler	36	SPEED
8	WFAA (8) ABC Dallas	37	FNC - Fox News Channel
9	KPDX (68) PAX-TV	38	CAR - Cartoon Network
11	KTVT (11) CBS Dallas	39	VHI - Video Hits 1
12	KTXA (21) UPN Dallas	40	MTV - Music Television
13	KERA (13) PBS Dallas/Ft. Worth	41	TLN - The Learning Channel
14	HGTV - Home and Garden TV	42	TV Land
15	DIS - The Disney Channel	43	Toon Disney
16	TNT - Turner Network Television	44	FAM - Family Channel
17	NIK - Nickelodeon	45	CNBC
18	ESPN2	46	APL- Animal Planet
19	ESPN	47	AMC - American Movie Classics
20	FX Networks	48	WE - Women's Entertainment
21	USA Network	49	The Travel Channel
23	KDFI (27) UPN Dallas	50	CMT - Country Music Television
24	KDBF (33) WB Dallas	51	HAL- Hallmark
25	KDIX (2) TBN Dallas	52	Sci-Fi Channel
26	TWC - The Weather Channel	53	TVFO- The Food Network
27	CNN - Cable News Network	54	NG - National Geographic
28	CNN Headline News	55	Court- Court TV
29	TCM - Turner Classic Movies	63	CSPAN
30	A&E - Arts & Entertainment	95	KSTR (49) Telefuture
		96	KUYN - Univision



Exhibit D

May 31, 2012 Advance Notice of Potential Infringement



Kevin Connor
SENIOR VICE PRESIDENT, AFFILIATE SALES & MARKETING

ADVANCE NOTICE OF POTENTIAL INFRINGEMENT

May 31, 2012

VIA CERTIFIED MAIL

Jim Roby
President
East Texas Cable.
301 E Hwy 243 #103
Canton, TX 75103

Re: KDAF Retransmission

Dear Mr. Roby:

Tribune Broadcasting Company ("Broadcaster") is the owner and operator of KDAF, Dallas, Texas (the "Station"). Since January 1, 2012, East Texas Cable ("East Texas") has been retransmitting the signal of the Station without the express consent from Broadcaster required by federal law. We therefore are forced to send East Texas this Advance Notice of Copyright Infringement.

Quite simply, East Texas's continued retransmission of the Station's signals is illegal. By continuing to retransmit the Station without Broadcaster's "express consent," East Texas has knowingly and willfully 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 East Texas'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, East Texas's carriage of Broadcaster's Station also constitutes a willful act of copyright infringement.

We hereby notify East Texas 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 East Texas 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 of Broadcaster's original programming, including all local news presentations, beginning on January 1, 2012.

Carriage of the Station's signal without consent is a serious violation of federal law and subjects East Texas 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, bringing East Texas's potential total forfeiture to \$1,132,500. *See Bailey Cable TV, Inc. Notice of Apparent Liability for Forfeiture*, 27 FCC Rcd. 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.

Unless Broadcaster receives a response to this letter from East Texas no later than 3:00PM Eastern Time on Wednesday, June 6, 2012, Broadcaster will have no choice but to submit an enforcement complaint with the FCC against East Texas for its violation of the Commission's retransmission consent provisions.

Very truly yours,



Kevin Connor
Senior Vice President,
Affiliate Sales and Marketing

CERTIFICATE OF SERVICE

I certify that on this 18th day of June, 2012, I caused the foregoing Enforcement Complaint to be served by email (and first-class mail where noted) 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.
Washington, D.C. 20554

Nancy Murphy
Associate Chief, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
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Mary Beth Murphy
Chief, Policy Division, Media Bureau
Federal Communications Commission
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Steven A. Broeckaert
Deputy 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
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Jim Roby*
President
East Texas Cable
301 E Hwy 243 #103
Canton, TX 75103
Info@etcable.net

*Denotes delivery via first-class mail
in addition to email



Rayya Khalaf