

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

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In the Matter of )

Charter Communications Holding )  
Company, LLC )

Emergency Enforcement Complaint )  
Concerning WMYD(TV), Detroit, )  
Michigan )  
\_\_\_\_\_

MB Docket 12-\_\_  
CSR \_\_\_\_\_

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

**ENFORCEMENT COMPLAINT**

WXON License, Inc. ("Granite"), the licensee of full power television station WMYD(TV), Detroit, Michigan, by its attorneys and pursuant to Sections 1.41 and 76.6 of the Commission's rules,<sup>1</sup> hereby files this Enforcement Complaint against Charter Communications Holding Company, LLC ("Charter"). Charter has knowingly and willfully violated Section 76.1601 of the Commission's rules.<sup>2</sup> On or about June 12, 2012, it dropped WMYD(TV) from its channel lineup on several cable systems serving various communities in Michigan without providing any notice to Granite. Charter also apparently failed to provide reasonable notice to its subscribers as required by Section 76.1603 of the Commission's Rules.<sup>3</sup> Consequently, Granite is forced to file this Enforcement Complaint to request that the Media Bureau immediately (1) issue an order imposing sanctions on Charter for failing to provide proper notice of its decision to drop WMYD(TV) to Granite and to its subscribers, and (2) take all other actions that the Bureau deems appropriate.

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<sup>1</sup> 47 C.F.R. § 1.41.

<sup>2</sup> 47 C.F.R. § 76.1601.

<sup>3</sup> 47 C.F.R. § 76.1603.

## BACKGROUND

Because Charter did not provide notice to Granite, Granite cannot confirm with absolute certainty which systems dropped WMYD(TV) but Granite believes that on or around June 12, 2012, Charter dropped WMYD(TV)'s signal from its cable systems serving Altmont Township, Lapeer, Livingston, North Branch, Oxford, and Monroe, Michigan without providing written notice to Granite. Granite only learned that Charter had dropped WMYD(TV) when viewers began to call and email the station to complain. As a result of Charter's unilateral decision to drop WMYD(TV) and failure to provide notice to its customers, these subscribers – the exact people whom the law was designed to protect – have been deprived of their right to express to their cable company how they would value a decision to delete a local broadcast station, upon which many of those viewers have long depended for local news, weather, and information. Charter's innocent subscribers have an urgent need for the Bureau to intervene in this situation without delay.

### **I. Charter Violated the Commission's Rules by Failing to Provide Any Advance Notice to Granite.**

Charter knowingly and willfully violated the Commission's rules when it deleted the signal of WMYD(TV) from various systems in Michigan without providing written notice to Granite. Section 76.1601 of the Commission's rules states that "a cable operator shall provide written notice to any broadcast television station at least 30 days prior to either deleting from carriage or repositioning that station."<sup>4</sup> Charter undoubtedly is a "cable operator," and WMYD(TV) is a "broadcast television station." Therefore, Charter was required to provide written notice to Granite at least thirty days before it deleted the signal for WMYD(TV). The Commission has proposed

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<sup>4</sup> 47 C.F.R. § 76.1601. *See also* 47 U.S.C. § 534(b)(9).

forfeitures of up to \$20,000 for failing to provide the required notice to a broadcaster before repositioning its station.<sup>5</sup>

## II. Charter Violated the Commission's Rules by Failing to Provide Any Advance Notice to Its Subscribers.

Section 76.1603(b) of the Commission's rules requires cable operators to notify their customers of "any changes in . . . programming services or channel positions *as soon as possible* in writing."<sup>6</sup> When the change "is within the control of the cable operator," such notice must be provided "a minimum of thirty (30) days in advance of such changes."<sup>7</sup> Section 76.1603(c) of the Commission's rules further provides that

In addition to the requirement of paragraph (b) of this section regarding advance notification to customers of any changes in rates, programming services or channel positions, cable systems shall give 30 days written notice to both subscribers and local franchising authorities before implementing any rate or service change. . . . When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. . . .<sup>8</sup>

The Commission has explained that "the 30-day notice requirement of section 76.1603 ensures that consumers actually receive the programming they were promised" by their cable operators when they paid their bills in advance for services they had not yet received.<sup>9</sup>

Charter was required to provide reasonable notice of the decision to drop WMYD(TV) to its subscribers. Charter's decision to drop WMYD(TV) was entirely within its control. Charter has retransmitted WMYD(TV) for many years and the parties have entered into a retransmission consent

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<sup>5</sup> Northland Cable Television, Inc., *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture*, 23 FCC Rcd 7872, 7877 at para 13 (2008).

<sup>6</sup> 47 C.F.R. § 76.1603(b) (emphasis added). *See also* 47 C.F.R. § 76.1601 (requiring cable operators to provide subscribers of the deletion or repositioning of any broadcast station). Section 76.1601(c) requires Charter to provide thirty days' notice to the local cable franchising authority. Granite has no knowledge of whether Charter complied with this provision.

<sup>7</sup> *Id.*

<sup>8</sup> 47 C.F.R. § 76.1603(c).

<sup>9</sup> Time Warner Cable, *Order on Reconsideration*, 21 FCC Rcd 9016, 9025 at para. 26 (MB 2006) ("*Time Warner/NFL Network Decision*"), *consent decree adopted*, Order, 21 FCC Rcd 11229 (MB 2006).

agreement providing Charter with the requisite consent to retransmit the station's signal going forward. Thus, Charter was required to provide its subscribers with reasonable notice at least thirty days before removing WMYD(TV) from its lineup. Charter, however, deliberately chose not to provide its subscribers with any notice. As a result, innocent subscribers were blindsided when they discovered on June 12, 2012 that WMYD-TV was no longer available.

### **III. The Bureau Should Sanction Charter for Its Knowing And Willful Violation of the FCC's Rules.**

The Bureau should impose severe sanctions against Charter for its knowing and willful violation of Section 76.1601 of the FCC's rules. Charter is the one of the largest cable operators in the country. It is well aware of the Commission's channel lineup notification requirements. Yet it has violated the notification requirements both regard to Granite and its own customers. The requirement to provide subscribers, the broadcast station, and the local franchising authority with thirty days' notice of any plans to delete a channel is an important provision to protect consumers. It provides affected subscribers with an opportunity to bring any concerns about the announced intention to the attention of the cable operator before any loss of service occurs. If need be, affected viewers may use the thirty-day period to secure alternative arrangements to view the station before losing service. The broadcast station also may use the thirty day period to alert its viewers, which is particularly important when the cable operator seems unwilling to provide any reasonable notice to subscribers.

### **CONCLUSION**

Charter willfully and knowingly violated the Commission's consumer protection rules requiring it to provide thirty days written notice to Granite before it deleted WMYD(TV) from its channel lineup. Moreover, Charter likely did not provide reasonable notice to its subscribers of this deletion. Accordingly, Granite requests that the Bureau promptly (1) issue an order imposing

sanctions on Charter for failing to notify Granite and its own subscribers, and (2) take all other actions that the Bureau deems appropriate.

Respectfully submitted,

WXON LICENSE, INC.

A handwritten signature in black ink, appearing to read "Kerry Stötler", written over a horizontal line.

Robert J. Folliard, III  
Kerry E. Stötler

Dow Lohnes PLLC  
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Washington, D.C. 20036  
202-776-2000

Its Attorneys

July 5, 2012

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

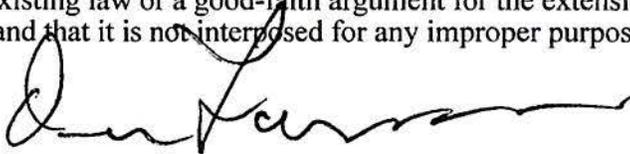
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In the Matter of

Charter Communications Holding  
Company, LLC

Enforcement Complaint Concerning  
WMYD(TV), Detroit, Michigan  
\_\_\_\_\_

**DECLARATION OF DUANE LAMMERS**

1. My name is Duane Lammers, and I serve as the Chief Operating Officer of Granite Broadcasting Corporation, which is the parent of WXON License, Inc.
2. Neither Granite Broadcasting Corporation nor WXON License, Inc. (collectively, "Granite") received any advance notice from Charter Communications Holding Company, LLC ("Charter") that it intended to drop WMYD(TV) from its cable systems then retransmitting the station's programming.
3. Granite did not learn that Charter had dropped WMYD(TV) until it began receiving complaints from viewers on June 12, 2012, expressing confusion and anger at Charter's decision.
4. After Charter dropped WMYD(TV), I spoke with Allan Singer, Senior Vice President of Programming for Charter Communications, Inc. ("Charter") Mr. Singer admitted that Charter could find no evidence that it had provided notice to Granite or to its subscribers.
5. I have read Granite's Enforcement Complaint and I am familiar with the facts discussed therein. I declare under penalty of perjury that the facts contained in this declaration and within the foregoing Enforcement Complaint are true and correct to the best of my knowledge, information, and belief formed after reasonable inquiry, that the Emergency Enforcement 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  
Chief Operating Officer  
Granite Broadcasting Corporation  
1001 Boardwalk Springs Place, Suite 111  
O'Fallon, Missouri 63368  
636-695-4127

Dated: July 5, 2012

## CERTIFICATE OF SERVICE

I certify that on this 5th day of July, 2012, I caused the foregoing Emergency Enforcement Complaint to be served by first-class mail, except where hand delivery is indicated, on the following:

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

Steven A. Broeckaert\*  
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Allan R. Singer  
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Rayya Khalaf