

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

In the Matter of _____
Crystal Cable TV Inc. _____
Enforcement Complaint Concerning _____
WILX-TV, Onondaga, Michigan _____

MB Docket 12-____
CSR _____

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

ENFORCEMENT COMPLAINT

Gray Television Licensee, LLC ("Gray"), licensee of television station WILX-TV, Onondaga, Michigan, by its attorneys, hereby files this Enforcement Complaint against Crystal Cable TV Inc. ("Crystal"). WILX-TV is assigned to and serves the Lansing Designated Market Area ("DMA"). Crystal serves customers who are wholly located in the Grand Rapids-Kalamazoo-Battle Creek DMA ("Grand Rapids DMA").

For at least four years—and likely much longer—Crystal has retransmitted without Gray's knowledge or consent the signal for WILX-TV on its cable system serving the community of Crystal, Michigan 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). Gray seeks an Order compelling Crystal to comply with the law and imposing such sanctions on Crystal as the Bureau deems appropriate for the operator's knowing and deliberate violations of the law.

BACKGROUND

In June 2012, upon learning that another broadcaster had filed a retransmission consent complaint against Crystal,¹ Gray discovered that Crystal also was retransmitting its station WILX-TV without consent. WILX-TV is the NBC affiliate for the Lansing DMA. Crystal's cable system is in the Grand Rapids DMA. Gray was unaware that Crystal had been importing and retransmitting its programming into this distant market. According to industry reference guides, however, Crystal has retransmitted WILX-TV for several years, dating back at least to January 1, 2008, and possibly longer.²

Naturally, because Gray did not know that Crystal was retransmitting WILX-TV, Gray could not have granted its consent to Crystal. Accordingly, on June 28, 2012, Gray sent Crystal an advanced notice of potential infringement, notifying Crystal that its carriage of WILX-TV's signal constituted a willful act of copyright infringement and a violation of federal law.³ After several attempts to reach out to Crystal, on July 27, 2012, the undersigned counsel for Gray spoke with Mr. Mark Winslow of Crystal Cable and reiterated Gray's demand that Crystal cease retransmission of WILX-TV. Despite Gray's efforts to inform Crystal that it does not have consent to carry WILX-TV, Crystal's website continues to list WILX-TV as one of the channels offered on its system.⁴ Therefore, based on information and belief, Crystal continues to retransmit WILX-TV's signal today.

¹ See Tribune Television Holdings, Inc., *Enforcement Complaint*, MB Docket No. 12-174, CSR-8665-C (filed June 19, 2012).

² See Television & Cable Factbook, Cable Volume 1, 2008, at D-687, D-688.

³ See Exhibit A.

⁴ See TV Listings Guide for Crystal Cable, at <http://www.crystalcable.tv/> (last visited November 6, 2012); Exhibit B.

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.⁵ 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."⁶ The Commission has stated that "properly documented retransmission of a television signal without consent would be grounds for imposition of a forfeiture."⁷

Under the Communications Act, Crystal must obtain Gray's consent to retransmit WILX-TV. Crystal indisputably is a multichannel video programming distributor within the meaning of Section 602 of the Communications Act.⁸ Based upon information and belief, Crystal's facility is equipped to provide multiple channels of video programming and cable service to multiple subscribers within a community.⁹ Likewise, WILX-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.¹⁰ Moreover, Crystal cannot claim WILX-TV has "must-carry" status on its cable system. WILX-TV and Crystal

⁵ 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).

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

⁷ 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).

⁸ *See* 47 U.S.C. §§ 522(7), 522(13).

⁹ *See* List of Registered Texas Cable Communities, *available at* <http://www.fcc.gov/mb/engineering/list/MI.xls> (last visited June 15, 2012) (showing Crystal Cable systems registered as MI1364 in Crystal, Michigan).

¹⁰ *See* 47 U.S.C. §§ 153(5), 153(6); *See* FCC File Number BLCDDT-20030117ABD.

serve different DMAs.¹¹ Therefore, WILX-TV automatically defaults to retransmission consent status for Crystal's cable system.¹² As a result, Crystal's retransmission of WILX-TV without Gray's express, written consent violates the Communications Act and the Commission's rules.

Unlike other retransmission disputes, which Gray has resolved privately without Commission involvement, Gray's only avenue for relief is filing this Complaint. Under the WILX-TV NBC affiliation agreement, Gray may only grant consent to multichannel video program distributors (1) serving subscribers in the Lansing DMA, (2) operating in areas where WILX-TV is deemed "significantly viewed," or (3) that have retransmitted WILX-TV since 1992. Crystal, Michigan is in the Grand Rapids DMA, and WILX-TV is not "significantly viewed" in Crystal, Michigan. Moreover, according to the 1993 Television & Cable Factbook, Crystal did not retransmit WILX-TV in 1992. Thus, any settlement with Crystal that calls for continued carriage of WILX-TV would place Gray in breach of its NBC affiliation agreement. As a result, Gray must seek relief from the Commission.

CONCLUSION

For at least four years—and likely much longer—Crystal has retransmitted WILX-TV's signal on its cable system without Gray's knowledge or express, written consent. Crystal therefore knowingly and willfully has violated the Communications Act and the Commission's rules. Ordinarily, Gray would seek to resolve this dispute privately, but, in this instance, because Crystal is so far beyond WILX-TV's natural market and because any settlement would potentially place Gray in material breach of important programming agreements, Gray must

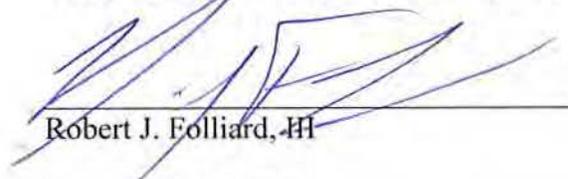
¹¹ Nielsen Media Research, Inc. has assigned WILX-TV as the NBC affiliate for the Lansing DMA. See BIA/Kelsey, *Investing in Television: Market Report 2011* at 41 (identifying DMA assignments applicable to the current carriage cycle). Crystal, Michigan is in Montcalm County, Michigan and thus inside the Grand Rapids-Kalamazoo-Battle Creek DMA. See BIA/Kelsey, *Investing in Television: Market Report 2011* at 41.

¹² See 76.64(a).

request that the Bureau promptly issue an order directing Crystal to come into compliance with its obligations with respect to WILX-TV's signal on all of the Systems and imposing such sanctions on Crystal as the Bureau deems appropriate.

Respectfully submitted,

GRAY TELEVISION LICENSEE, LLC

A handwritten signature in blue ink, appearing to read "Robert J. Folliard", is written over a horizontal line. The signature is stylized and somewhat illegible.

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

Its Attorneys

November 6, 2012

EXHIBIT A

June 28, 2012 Advanced Notice of Potential Infringement

ADVANCE NOTICE OF POTENTIAL INFRINGEMENT

June 28, 2012

**VIA OVERNIGHT MAIL AND
VIA EMAIL (mark@crystalcable.tv)**

Mark Winslow
General Manager
Crystal Cable TV Inc.
122 W Lake Street
Crystal, MI 48818

Re: WILX-TV Retransmission

Dear Mr. Winslow:

We represent Gray Television Group, Inc. ("Broadcaster"), which is the owner of television station WILX-TV, NBC, Onondaga, Michigan (the "Station"). Since at least January 1, 2008 (and likely even longer), Crystal Cable Service ("Crystal") has been retransmitting the signal of the Station without the express consent from Broadcaster required by federal law. Broadcaster has not entered into a retransmission consent agreement with Crystal. Indeed, we were not aware that Crystal was retransmitting the Station until we saw that WILX-TV is listed on the channel lineup on Crystal's website and until we confirmed that, according to the Cable Factbook, this carriage dates back at least to 2008. We therefore are forced to send Crystal this Advance Notice of Copyright Infringement.

Quite simply, Crystal's retransmission of the Station's signal is illegal. By retransmitting the Station without Broadcaster's "express consent," Crystal 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 Crystal'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, Crystal's carriage of Broadcaster's Station also constitutes a willful act of copyright infringement.

We hereby notify Crystal 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 Crystal with this Advance Notice of Potential Infringement, we establish, pursuant to 17 U.S.C. Section 411(b),

Advance Notice of Potential Infringement
June 28, 2012
Page 2

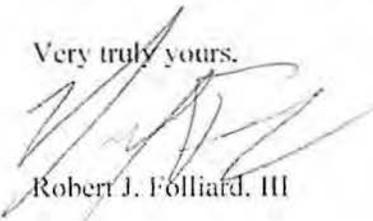
Broadcaster's right as copyright owner of the Station's original programming to institute a cause of action for copyright infringement. In particular, we provide you with this notice of infringement of Broadcaster's original programming, including all local news presentations, beginning on at least January 1, 2012.

Carriage of the Station's signal without consent is a serious violation of federal law and subjects Crystal 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 Crystal's potential total forfeiture to approximately \$12,318,750. *See Bailey Cable TV, Inc. Notice of Apparent Liability for Forfeiture*, 27 FCC Red. 2631 (Med. Bur. 2012). If we confirm that Crystal's retransmission of the Station's signal without Broadcaster's consent dates back even before 2008, the fine could be significantly higher. 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 Crystal no later than 5:00 PM Eastern Time on Friday, June 29, 2012, Broadcaster will have no choice but to submit an enforcement complaint with the FCC against Crystal for its violation of the Commission's retransmission consent provisions.

Very truly yours,



Robert J. Folliaud, III

Attachment

cc: Kevin P. Latek, Esq. (Kevin.Latek@gray.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 Red 4387, 4388 (1991).

¹⁶ See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Red 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 Red at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Red 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 Red 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 Red 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 base forfeiture x 34 days = \$255,000 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 Red 17087, 17115 (1997), *recons. denied* 15 FCC Red 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 Red 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 Red 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 Red 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 Red 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 Red 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.

Exhibit B

Crystal Cable TV Channel Lineup

CABLE TELEVISION CHANNEL LINE-UP

MONTHLY

2	FAM	ABC Family Channel
3	NICK	Nickelodeon
4	USA	USA Variety
5	FOX 17	WXMI Grand Rapids
6	CBS 6	WLNS Lansing
7	PBS 14	WCMU Mt. Pleasant
8	NBC 8	WOOD Grand Rapids
9	WGN 9	Chicago
10	NBC 10	WILX Lansing
11	TCT 49	WAQP Saginaw
12	ABC 12	WJRT Flint
13	ABC 13	WZZM Grand Rapids
14*	HBO	Premium Movie
15*	CINEMAX	Premium Movie
16	CNN	Cable News Network
17	HLN	Headline News
18	SPIKE TV	Nashville Network
20*	STARZ	The Premium Movie Package
21*	AMC	
22*	ENCORE	
23	TBS	Turner Broadcasting
24	ESPN	National Sports
25	FSD	Fox Sports Detroit
26	TCM	Turner Classic Movies
27	VERSUS	Versus
28	LOCAL INFORMATION	
29	CMT	Country Music Television
30	DISC	Discovery Channel
31	MTV	Music Television (Pop)
32	TNT	Turner Network
33	HGTV	Home & Garden
34	A&E	Arts & Entertainment
35	OUT	Outdoor Channel
36	BIG 10 NETWORK	College Sports
37	ESPN2	National Sports
38	TWC	Weather Channel
39	HSN	Home Shopping Network
40	SPORTSMANS	Sportsmans Channel
41	FX	FX Variety
42	DISN	Disney Channel
43	ION 43	WZPX Grand Rapids
44	COM	Comedy Central
45	CART	Cartoon Network
46	TVL	TV Land
47	QVC	Home Shopping
48	VH-1	Music(Rock Pop)
49	HIS	History Channel
50	MSNBC	News
51	SYFY	SYFY Channel
52	FSDP	Fox Sports Detroit Plus
53	TLC	The Learning Channel
54	NATGEO	National Geographic
55	FOOD	Food TV
56	HLMK	Hallmark Channel
57	CNBC	Business Financial News
58	LIFE	Lifetime Network
59	SPEED	Speedvision
60	FOXN	FOX NEWS

Total Basic
Mini Movie Pack
HBO or Cinemax
DIAL UP INTERNET

Wireless TV

Installation
Monthly Service

SERVICE

Basic Install (1 outlet)
Each Additional Outlet
Reconnect Fee
Disconnect Fee
Disconnect Fee (Non Pay
Service Call
Change of Service
(account must be current)

Order O

Payment P

*Cable TV and Internet se
advance on the 20th of ea

*Payment is due on the 1

*Unpaid services are subj
late fee after the 10th.

*Unpaid services after the
month will be disconnecte
disconnect fee will be cha

*Accounts disconnected f
must have all charges pai
service can be restored.

Effective December 10, 2

Pay Bill C

Crystal Ca
122 Lake Stre
Crystal Michi
989.235.394
989.235.394

Contact

61 C SPAN

Government

CRYSTAL CABLE

Exhibit C

Declaration of Kevin P. Latek

1. My name is Kevin P. Latek, and I serve as Vice President, Law and Development for Gray Television, Inc. ("Gray"), which is the ultimate parent company of the licensee of WILX-TV.
2. I am responsible for retransmission consent related matters for Gray. Until June 2012, I was unaware that Crystal Cable TV, Inc. was retransmitting WILX-TV. Gray has not entered into an agreement with Crystal or otherwise granted its consent to retransmit WILX-TV. For Gray to grant consent to Crystal, Gray would need to obtain a special waiver of a provision in its NBC affiliation agreement.
3. I declare under penalty of perjury that the facts contained in this declaration 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.



Kevin P. Latek
Gray Television, Inc.
4370 Peachtree Rd. NE
Atlanta, GA 30319

Dated: November 6, 2012

CERTIFICATE OF SERVICE

I certify that on this 6th day of November, 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.
Washington, D.C. 20554

Mary Beth Murphy
Chief, Policy Division, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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

Diana Sokolow
Attorney Advisor, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Mark Winslow*
General Manager
Crystal Cable TV Inc.
122 W Lake Street
Crystal, MI 48818
mark@crystalcable.tv

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



Tammi Foxwell