

**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 12-336
CSR 8742-C

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

**REPLY OF GRAY TELEVISION LICENSEE, LLC TO
ANSWER OF CRYSTAL CABLE TV, INC.**

Gray Television Licensee, LLC ("Gray"), licensee of television station WILX-TV, Onondaga, Michigan, by its attorneys, hereby files this Reply to the Answer of Crystal Cable TV, Inc. ("Crystal") in the above referenced proceeding.¹ As Crystal's Answer confirms, the key fact is not in dispute. Crystal had been retransmitting WILX-TV for several years without Gray's express written consent as required under Section 76.64 of the Commission's rules.² Retransmission of a broadcast station's signal without the licensee's consent is a serious violation of federal law subjecting the violator to a potential forfeiture in the amount of \$7,500 *per day*.³ In this case, Crystal's behavior is particularly egregious because Crystal retransmitted WILX-TV without Gray's express consent – indeed, without Gray's knowledge – for several

¹ This Reply is timely filed pursuant to the extension of time granted by Diana Sokolow, Media Bureau, FCC, by email dated December 7, 2012.

² 47 C.F.R. § 76.64(j) (stating that any grant of retransmission consent "shall be in writing and specify the extent of the consent being granted.") (emphasis added).

³ See *Baily Cable TV, Inc.*, 27 FCC Rcd 2631 (2012).

years. Accordingly, Gray respectfully requests that the Bureau issue an order imposing sanctions on Crystal for its flagrant and willful violation of federal law.

ARGUMENT

Section 325(b) of the Communications Act of 1934, as amended, requires that multichannel video programming distributors must obtain “**express authority** of the originating station” to retransmit the signal of a broadcasting station.⁴ Section 76.64 of the rules of the Federal Communications Commission adds the additional requirements that the originating station’s express consent be “in **writing** and . . . specify the extent of the consent being granted.”⁵ Indeed, as the Bureau recently stated in *Bailey*:

We emphasize that the cable operator has discretion to decide whether to enter into a retransmission agreement, but in the absence of such an agreement, the Act and the Commission’s rules prohibit retransmission of the station’s signal.⁶

As Crystal admits, it retransmitted WILX-TV’s signal without Gray’s express consent. On November 14, 2012, and again on December 7, 2012, the Bureau hosted conference calls with counsel for Gray and a representative from Crystal. On those calls, Crystal’s representative acknowledged that it retransmitted WILX-TV for several years without ever obtaining Gray’s express consent.⁷ In its Answer, Crystal claims it had “discussions” in 2010 about continued carriage of WILX-TV, but those “discussions” never resulted in any written grant of consent. As Gray explained in its Complaint, it never granted permission to Crystal to retransmit WILX-TV.⁸

⁴ 47 U.S.C. § 325(b)(1) (emphasis added).

⁵ 47 C.F.R. §§ 76.64(a), 76.64(i), 76.64(j) (emphasis added).

⁶ *Bailey*, 27 FCC Rcd at ¶7.

⁷ Crystal could not confirm when it first began retransmitting WILX-TV, nor could it produce any written documentation demonstrating that Gray ever granted consent for such retransmission. As Gray noted in its Enforcement Complaint, according to industry reference books, Crystal has retransmitted WILX-TV since at least 2008 – and perhaps longer. *See* Television & Cable Factbook, Cable Volume 1, 2008, at D-687, D-688. Gray does not have any records of a retransmission agreement with Crystal ever.

⁸ *See Enforcement Complaint* at 1.

In fact, because Crystal serves areas well outside of WILX-TV's designated market area and natural viewing area, WILX-TV's network affiliation would have required Gray to obtain a waiver from the NBC Television Network before granting consent to Crystal. Although Gray would have sought such a waiver from NBC if Crystal had asked, the fact is Gray had no knowledge that Crystal was retransmitting WILX-TV.⁹

Regardless, it is unnecessary that the Bureau resolve the disputed fact of whether Gray was aware of Crystal's retransmission of WILX-TV or tacitly approved of it. The Commission's rules are clear. For a grant of retransmission consent to be effective, it must be in writing, and it must specify the extent of the consent being granted.¹⁰ As the Bureau has stated on a number of occasions, given the enormous number of cable systems and television stations across the country, it is critical that the Commission have clear, enforceable, brightline rules. If the Commission were to allow a cable operator to retransmit a broadcast station indefinitely based on a single conversation that may or may not have occurred three years ago, it necessarily would embroil the Commission in disputes relying on stale memories and differing interpretations of a conversation.¹¹ For this reason, the Commission's rules wisely state that for a grant of retransmission consent to be effective, it must be in writing.

Crystal cannot – and does not – claim that it possessed Gray's written consent. Therefore, Crystal had no legal authority to retransmit WILX-TV, yet it did so anyway. Indeed, it misappropriated Gray's signal for several years without ever following up or ever contacting Gray to confirm whether it had legal authority to retransmit WILX-TV. Moreover, Crystal's

⁹ See *Enforcement Complaint* at 1.

¹⁰ See §76.64(j).

¹¹ *C.f.* Radio Perry, Inc., 26 FCC Rcd 16392, ¶ 6 (2011) (discussing the “chaos” that would result from allowing a broadcaster to disavow an election of retransmission consent); Gannon Univ. Broadcasting, Inc. 10 FCC Rcd 8619, ¶ 7 (1995) (stating that the Commission created brightline rules to “avoid embroiling the Commission in disputes”).

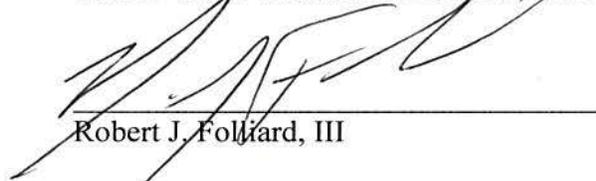
disregard of the Commission's rules does not appear to have been a one-time innocent mistake. Crystal also apparently retransmitted the signal of at least one other broadcast station without the licensee's consent.¹²

CONCLUSION

It is undisputed that by retransmitting WILX-TV without Gray's express consent for several years, Crystal was in violation Section 325(b) of the Communications Act and the Commission's rules. In *Bailey*, the Bureau found that Bailey Cable TV was liable for a forfeiture in the amount of \$15,000 for each station it retransmitted without consent.¹³ Given the circumstances here, Gray respectfully submits that a similar result is appropriate.

Respectfully submitted,

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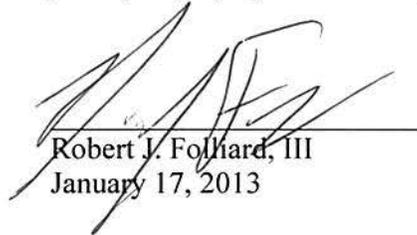
January 17, 2013

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

¹³ *Bailey*, 27 FCC Rcd ¶8. In *Bailey*, however, the cable operator retransmitted the broadcast station for only 34 days without consent. Crystal was in violation for a substantially longer period of time.

VERIFICATION

I have reviewed the foregoing Reply 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 Reply 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.



Robert J. Folhard, III
January 17, 2013

CERTIFICATE OF SERVICE

I certify that on this 17th day of January, 2013, I caused the foregoing Reply to be served by email (and first-class mail where noted) on the following:

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