

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

ACCEPTED/FILED

DEC 18 2013

Federal Communications Commission
Office of the Secretary

In the Matter of:)
)
Buckeye Cablevision, Inc.)
)
Complaint Seeking Forfeiture Order for)
Violation of the Commission's Rules)

MB Docket Nos. 12-1; 13-____
CSR-_____

To: The Secretary's Office

Attn: William Lake,
Chief, Media Bureau

**COMPLAINT SEEKING FORFEITURE ORDER FOR
VIOLATION OF THE COMMISSION'S RULES**

WNWO Licensee, LLC ("WNWO LLC"), licensee of commercial television station
WNWO-TV, Toledo, Ohio, hereby submits this Complaint Seeking Forfeiture Order for
Violation of the Commission's Rules ("Complaint") against Buckeye Cablevision, Inc.
("Buckeye"), operator of the cable television system serving Toledo, Ohio, and adjoining areas.
This Complaint is submitted pursuant to Section 76.7 of the Federal Communications
Commission's ("FCC" or "Commission") Rules.¹

This Complaint is submitted because, commencing not later than December 16, 2013,
and perhaps far earlier, Buckeye failed to provide WNWO-TV the cable network non-
duplication protection to which it is entitled under Section 76.92 of the Commission's Rules.²
WNWO LLC seeks an Order imposing such sanctions as the Commission deems appropriate in
light of Buckeye's willful and repeated violations of the law.

¹ 47 C.F.R. § 76.7.
² 47 C.F.R. § 76.92.

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I. INTRODUCTION

WNWO LLC is the licensee of WNWO-TV, Toledo, Ohio, which is affiliated with the NBC television network. WNWO LLC is ultimately controlled by Sinclair Broadcast Group, Inc. (“SBGI”). Pursuant to its Network Affiliation Agreement, WNWO LLC is entitled to exercise the right of non-duplication protection to the maximum geographic extent permitted by the Commission’s Rules.³ That zone of protection includes Toledo, its city of license.

Buckeye, using the name Buckeye CableSystem, operates the cable television system serving Toledo and portions of northwestern Ohio and southeastern Michigan. Buckeye is a subsidiary of Block Communications, which publishes The Blade, the local Toledo daily newspaper. In addition, Buckeye operates cable-only channel “WT05” which serves as the sole CW network affiliate in northwest Ohio, in direct competition with local broadcast stations. Among its offerings, Buckeye retransmits the signal of NBC affiliate WDIV-TV, Channel 4, Detroit, Michigan, over both the standard definition and high definition tiers of its cable system serving northwest Ohio and southeast Michigan.

WNWO LLC has made timely and valid requests for non-duplication protection on Buckeye’s Toledo system. The most recent was received by Buckeye by U.S. Mail on March 30, 2013.⁴ Prior to December 16, 2013, WNWO LLC was unaware that the signal of WDIV-TV was being made available by Buckeye without deletion of duplicating NBC network programming.

Carriage of WNWO-TV by the Buckeye system has been pursuant to a retransmission consent agreement. That agreement, which expired pursuant to its terms on August 31, 2013, had been extended pursuant to agreement of the parties until December 15, 2013. In view of

³ See Exhibit 1.

⁴ See Exhibit 2.

Buckeye's failure to accept or make a counter-offer to the most recent terms proposed by WNWO LLC, its right to carry the WNWO-TV signal has now expired, and Buckeye has removed the WNWO-TV signal from its carriage lineup.

On the morning of December 16, 2013, Christopher J. Topf, the President of WNWO LLC, viewed the WDIV-TV signal on a television set in his office which is connected to the Buckeye system. The WDIV-TV signal appeared in the standard definition tier. Between the hours of 7:00 a.m. EST and approximately 9:30 a.m. EST Buckeye retransmitted the NBC network program "Today" on the signal of WDIV-TV on Buckeye's standard definition tier. That program is a popular daily NBC network program and it appeared in a window specifically identified in WNWO LLC's non-duplication request letter. Despite being required to delete this simultaneous network programming from the signal of WDIV-TV, Buckeye nevertheless made the WDIV-TV NBC network programming available to its subscribers in violation of the FCC's network non-duplication rules.

Upon learning of the problem, SBGI's corporate legal counsel wrote to Brad Mefford, President of Buckeye, pointing out that the Buckeye cable system serving Toledo had violated the non-duplication to which WNWO-TV is entitled by carrying "Today" in the Toledo DMA via Buckeye's retransmission of the signal of WDIV-TV, Detroit. The letter asked Buckeye to cease and desist from its violation of the non-duplication rules.

On the morning of December 17, 2013, Mr. Topf heard a discussion on a local radio station in which it was stated that NBC programming was viewable by watching the signal of WDIV-TV on Buckeye's system in Toledo and that the NBC hit program, "The Voice," was available to Buckeye subscribers in the Toledo area on the evening of December 16. He again began to personally monitor the WDIV-TV signal as retransmitted by Buckeye on Tuesday,

December 17, 2013. While the WDIV-TV signal did not appear on Buckeye's standard definition tier, Mr. Topf did observe the complete NBC network lineup being carried on the WDIV-TV signal in HD format on Channel 84.6 of Buckeye's service to WNWO-TV's studio, despite claims by Buckeye management that the WDIV-TV signal was not available in the Toledo area.⁵ Although it is unclear when Buckeye began making the WDIV-TV network programming available to its subscribers in Toledo on Channel 84.6, based on the facts of this case, it appears as if this violation is not a new one and has likely been going on for some time.

II. BUCKEYE'S ACTIONS AND ITS FAILURE TO PROVIDE NETWORK NON-DUPLICATION PROTECTION TO WNWO-TV VIOLATES THE COMMISSION'S NETWORK NON-DUPLICATION RULES

Under Section 76.92 of the Commission's Rules, a cable system, upon receiving notification pursuant to Section 76.94 of the Commission's Rules, "shall not carry" a duplicating network program as broadcast by any other television signal.⁶ WNWO LLC gave Buckeye timely and valid notification under Section 76.94 that it held network non-duplication rights for NBC programming within the geographic zone that includes Buckeye's cable television system. The WDIV-TV signal is not significantly viewed within Lucas County, Ohio, and thus is not entitled to the rights set forth in Section 76.92(f) of the Commission's Rules.⁷

Buckeye chose to carry the unaltered signal of WDIV-TV throughout the area in which WNWO-TV is entitled to network non-duplication protection. This was a violation of the Commission's non-duplication rules, which clearly provide that a cable community located in

⁵ See Exhibit 3. Video copies of portions of the Today program were recorded from the WDIV signal, as retransmitted on the Buckeye system on December 17, 2013, and will be submitted through the Secretary's Office of the FCC as Exhibit 4.

⁶ See 47 C.F.R. §§ 76.92(a) and 76.94.

⁷ See Significantly Viewed List, last modified November 20, 2013, as set forth at <http://transition.fcc.gov/mb/significantviewedstations112013.pdf>.

whole or in part within the geographic zone for a network program, the network non-duplication rights to which are held by a commercial television station licensed by the Commission, shall not carry that program as broadcast by any other television signal. Inasmuch as the WDIV-TV signal does not fall under any of the exceptions set forth in Section 76.92, Buckeye's actions are a clear violation of the Commission's Rules.

The failure to provide non-duplication protection as required is a serious violation of the FCC's Rules. Although it is not clear precisely how long Buckeye has made the WDIV-TV NBC network programming available to its subscribers in Toledo, it appears as if the violation has likely been occurring for some time, and WNWO LLC respectfully requests that the Commission initiate an inquiry requiring Buckeye to disclose precisely how long it has been illegally importing the distant WDIV-TV network programming into the Toledo market in violation of the Commission's network non-duplication rules.

III. CONCLUSION

Buckeye's failure to provide non-duplication protection to the NBC programming of WNWO-TV shows a serious failure to ensure compliance with the Commission's Rules. WNWO LLC asks the Commission to require Buckeye to disclose precisely how long it has been impermissibly making the NBC network programming of WDIV-TV available to its subscribers in Toledo and to impose a significant monetary forfeiture and such other sanctions on Buckeye

as it deems appropriate in light of Buckeye's willful and repeated violation of the Commission's Rules.

Respectfully Submitted,

WNWO Licensee, LLC

By: _____ /s/
Clifford M. Harrington
Paul A. Cicelski

PILLSBURY WINTHROP
SHAW PITTMAN LLP
2300 N Street, N.W.
Washington, D.C. 20037
(202) 663-8000

Dated: December 18, 2013

Exhibit 1

Amendment to NBC Affiliation Agreement

NBCUniversal

March 27, 2013

Chris Topf
President & CEO
WNWO-TV
300 South Byrne Road
Toledo, OH 43615

Re: WNWO-TV / Toledo, OH – Network Non-Duplication Amendment

Dear Mr. Topf:

The following amends the agreement dated January 1, 2007, between the NBC Television Network, a division of NBCUniversal Media, LLC, as successor in interest to NBC Universal, Inc. ("NBCU") and Barrington Broadcasting Corporation ("Licensee") (the "Agreement") regarding the affiliation of WNWO-TV in the designated market area of Toledo, OH ("Station") with the NBC Television Network ("NBC").

1. During the term of the Agreement, Station shall, by the terms of this amendment, be entitled to invoke protection against the simultaneous duplication of NBC's network programming, as carried by Station, imported within a radius from Station's designated community of license as defined in Section 73.606 of the Rules of the Federal Communications Commission ("FCC") to the maximum geographic extent from such community of license permitted under the present Sections 76.92, 76.122 and 73.658(m) of the FCC's Rules and in accordance with the terms and conditions of said Rules.

2. Either party shall have the right to terminate this amendment at any time during the term of the Agreement, by written notice to the other given at least 60 days prior to the effective date of such termination, but only in the event of the following:

(i) Station grants consent to the retransmission of its broadcast signal by any cable television system or, except as provided in subparagraph 2(ii) below, to any other multichannel video program distributor ("MVPD"), as defined in Section 76.64(d) of the FCC Rules, whose carriage of broadcast signals requires retransmission consent, and such cable system or MVPD is located outside the Designated Market Area ("DMA") as defined by Nielsen to which Station was assigned, unless Station's signal is actually carried by such cable system or MVPD as of April 1, 1993, or, with respect to such cable system, is "significantly viewed" (as determined by the FCC); or

(ii) Station grants consent to the retransmission of its broadcast signal by any MVPD that provides such signal to any home satellite dish user, unless such user is located within Station's own DMA or is an "unserved household" as

30 Rockefeller Plaza
New York, NY 10112

defined in Section 119 (d) or any successor provision of Title 17 of the United States Code.

Any notice of termination under paragraph 2 hereof given by either party may be withdrawn by such party if, as of the effective date provided therein, the circumstances giving rise to such party's right of termination no longer exist.

To the extent that any term of the Agreement is inconsistent with the terms of this amendment, this amendment shall prevail. Except as modified by this amendment, the Agreement shall remain in full force and effect.

Very truly yours,

NBC Television Network
a division of NBCUniversal Media, LLC

By: Jean M. Dietze

Name: Jean Dietze
Title: Executive Vice President, Affiliate Relations

AGREED AND ACCEPTED:

WNWO-TV

BY: [Signature]

Name: Chris Topf
Title: President & CEO

Exhibit 2

Non-Duplication Notice Letters to Buckeye Cablevision Inc.

Barrington Broadcasting Group LLC

March 25, 2013

**BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Buckeye Cablevision Inc.
5566 Southwyck Blvd.
Toledo, OH 43614
Attn: Executive Vice President

Buckeye Cablevision, Inc.
5555 Airport Highway
Suite 110
Toledo, OH 43615
Attn: Patrick Deville

Re: Notification of Network Nonduplication Rights

To Whom It May Concern:

Barrington Toledo License LLC, licensee of WNWO-TV, Toledo, OH (the "Station"), located at 300 S. Byrne Road, Toledo, OH 43615, hereby gives notice to Buckeye Cablevision Inc. of Station's network nonduplication rights in connection with the Station's affiliation with the NBC Television Network. These rights are effective immediately and extend through December 31, 2015. The Station holds the exclusive broadcast and cable carriage rights in a geographic area as specified by NBC Television Network that encompasses or may encompass your cable systems for the NBC Television Network programs broadcast by the Station.

The Station's network nonduplication rights apply with respect to all NBC Television Network programs, in any and all formats (whether digital, analog or otherwise), including those programs broadcast by the Station during the time periods set forth below. These time periods may be subject to change. In addition, the Station holds network nonduplication rights with respect to other programming that is not regularly scheduled but which is aired by the Station. These network non-duplication rights apply with respect to all NBC Television Network programs during the times that they are broadcast on the Station. Currently, NBC Television Network's regularly scheduled programs are scheduled to air on the following days and time periods (subject to change):

Monday – Saturday:	8:00-11:00pm
Sunday:	7:00-11:00pm
Monday through Thursday:	11:35pm-2:05am
Friday:	2:05am-2:35am
Saturday:	11:30pm-1:01am

650 East Algonquin Road, Suite 300 • Schaumburg, IL 60173
847.884.1877 • Fax: 847.755.3045

Monday through Friday: 4:30-5:00am., 7:00-11:00am, 1:00-2:00pm, and 6:30-7:00pm
Saturday: 7:00-9:00am, 10:00am-1:00pm, and 6:30-7:00pm
Sunday: 8:00-10:00am and 6:30-7:00pm

ALL NIGHT PROGRAMMING

Monday through Thursday: 2:05-4:00am
Friday: 2:35-4:30am
Saturday: 1:01-2:30am
Sunday: 11:30pm-1:30am

The Station hereby invokes its right under the network non-duplication rules of the Federal Communications Commission, 47 C.F.R. §§ 76.92 - 76.94, to protection from any and all of the cable systems listed above or any others operated by you within 35 miles of Toledo, OH in the distribution to their customers of any programs referenced above by any means other than by carrying the Station. As noted above, these rights are effective immediately. To the extent that these systems carry a signal that includes programming to which we are entitled to nonduplication protection, they must delete such programming.

If you have any questions, please call me at (847) 884-1877.

Sincerely yours,



Warren Spector
Senior Vice President &
Chief Financial Officer

7011 1570 0000 5177 0682

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Restricted Delivery Fee (Endorsement Required)	<u>6.11</u>
Total Postage & Fees	
Postmark Here	<u>WWD</u>
Send Street or P.O. City	Buckeye Cablevision, Inc. 409 E. Market Street-PO Box 5800 Sandusky, OH 44870
PS Form	Attn: Patrick Deville

<p>SENDER: COMPLETE THIS SECTION</p> <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>1. Article Addressed to:</p> <p><u>WWD</u></p> <p>Buckeye Cablevision, Inc. 409 E. Market Street-PO Box 5800 Sandusky, OH 44870 Attn: Patrick Deville</p> <p>2. Article Number (Transfer from service label)</p> <p>7011 1570 0000 5177 0682</p>	<p>COMPLETE THIS SECTION ON DELIVERY</p> <p>A. Signature <input checked="" type="checkbox"/> Agent <u>V Szmitk</u> <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <input type="checkbox"/> Yes <u>V Szmitk</u> <input type="checkbox"/> No</p> <p>C. Date of Delivery <u>2/30</u></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>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>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
--	---

Barrington Broadcasting Group LLC

March 25, 2013.

**BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Buckeye Cablevision Inc.
5566 Southwyck Blvd.
Toledo, OH 43614
Attn: Executive Vice President

Buckeye Cablevision, Inc.
5555 Airport Highway
Suite 110
Toledo, OH 43615
Attn: Patrick Deville

Re: Notification of Network Nonduplication Rights

To Whom It May Concern:

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Saturday:	11:30pm-1:01am

650 East Algonquin Road, Suite 300 • Schaumburg, IL 60173
847.884.1877 • Fax: 847.755.3045

Monday through Friday: 4:30-5:00am., 7:00-11:00am, 1:00-2:00pm, and 6:30-7:00pm
Saturday: 7:00-9:00am, 10:00am-1:00pm, and 6:30-7:00pm
Sunday: 8:00-10:00am and 6:30-7:00pm

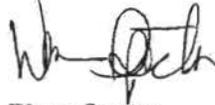
ALL NIGHT PROGRAMMING

Monday through Thursday: 2:05-4:00am
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Saturday: 1:01-2:30am
Sunday: 11:30pm-1:30am

The Station hereby invokes its right under the network non-duplication rules of the Federal Communications Commission, 47 C.F.R. §§ 76.92 - 76.94, to protection from any and all of the cable systems listed above or any others operated by you within 35 miles of Toledo, OH in the distribution to their customers of any programs referenced above by any means other than by carrying the Station. As noted above, these rights are effective immediately. To the extent that these systems carry a signal that includes programming to which we are entitled to nonduplication protection, they must delete such programming.

If you have any questions, please call me at (847) 884-1877.

Sincerely yours,



Warren Spector
Senior Vice President &
Chief Financial Officer

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WWD

To: **Buckeye Cablevision Inc.**
 or: **5566 Southwyck Blvd.**
 or: **Toledo, OH 43614**
 PS Attn: **Executive Vice President**

SENDER: COMPLETE THIS SECTION

- 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.

1. Article Addressed to:

Buckeye Cablevision Inc.
 5566 Southwyck Blvd.
 Toledo, OH 43614
 Attn: Executive Vice President

WWD

COMPLETE THIS SECTION ON DELIVERY

A. Signature
 X *Carlyp [Signature]* Agent Addressee

B. Received by (Printed Name) C. Date of Delivery
 APR 1 2013

Is delivery address different from item 17 Yes
 If YES, enter delivery address below: No

3. Service(s)
 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) **7011 1570 0000 5177 0675**

Exhibit 3

Declaration of Christopher J. Topf

Declaration of Christopher J. Topf

1. My name is Christopher J. Topf.
2. I am President and CEO of WNWO Licensee, LLC, licensee of television Station WNWO-TV, the NBC affiliate serving the Toledo, Ohio, television market.
3. WNWO-TV subscribes to the services of the Buckeye Cablevision, Inc. ("Buckeye"), cable television system at our studios in Toledo.
4. I am personally aware that a non-duplication notice was sent to Buckeye Cablevision shortly after the most recent amendment to the network affiliation agreement between WNWO-TV and NBC. I have provided counsel with a copy of the USPS return receipt for that notice.
5. On the morning of December 16, 2013, I checked to see if WDIV-TV was being carried on the Buckeye system as provided to our offices, and whether the NBC programming was being deleted, as it should have been pursuant to WNWO LLC's non-duplication request.
6. I observed that, between the hours of 7:00 a.m. EST and 9:00 a.m. EST, the NBC network program "Today" was being retransmitted on the signal of WDIV-TV on Buckeye's standard definition cable feed. The program was clearly visible without video or audio distortion. I compared the NBC programming to that being broadcast over-the air by WNWO-TV, and found that the same NBC programming appeared on WDIV-TV and WNWO-TV simultaneously (except for local weather inserts and commercials/station promos). The duplication continued for about two hours.
7. I am informed, and heard a discussion on a local radio program about this, that on the evening of December 16, 2013, the WDIV-TV broadcast of the NBC program "The Voice" was carried on the Buckeye northwest Ohio system and viewable on channel 84.6 at the same time as it was broadcast by WNWO-TV.
9. Again, throughout the day December 17, 2013, I monitored the retransmission of the WDIV-TV signal by the Buckeye cable system from our station offices, and found that the full duplicating NBC program lineup was viewable on channel 84.6 without deletion for non-duplication purposes. I made copies of segments of the "Today" program which clearly identify the broadcast as that of WDIV-TV, Channel 4, Detroit. At approximately 7:00 p.m., the NBC programming of WDIV-TV on channel 84.6 appeared to have been replaced by infomercials.
10. It is apparent to me that Buckeye was not deleting the simultaneously duplicating NBC programming of WDIV-TV. I understand this to be a violation of the network non-duplication rights of WNWO-TV by Buckeye. I immediately notified our counsel of this violation by Buckeye.

I hereby declare under penalty of perjury that the above statement is true and correct to the best of my knowledge and belief.



December 18, 2013

Exhibit 4

Today Show DVD

(To be filed with FCC's Office of the Secretary)

CERTIFICATE OF SERVICE

I, Julia Colish, a secretary with the law firm of Pillsbury Winthrop Shaw Pittman LLP, hereby certify that copies of the foregoing "**COMPLAINT SEEKING FORFEITURE ORDER FOR VIOLATION OF THE COMMISSION'S RULES**" was served via U.S. mail on this 18th day of December 2013 to the following:

Steven Broeckaert*
Media Bureau
Federal Communications Commission
445 12th Street, S.W., Room 4-A865
Washington, D.C. 20554

Mary Beth Murphy*
Media Bureau
Federal Communications Commission
445 12th Street, S.W., Room 4-A766
Washington, D.C. 20554

Simon Banyai*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Christopher C. Cinnamon**
Cinnamon Mueller
307 North Michigan Avenue
Suite 1020
Chicago, IL 60601

Eve R. Pogoriler**
Covington & Burling LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004

/s/
Julia Colish

*Via Electronic Mail and Hand Delivery

**Via Electronic Mail and U.S. Mail