

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of:)	
)	
Buckeye Cablevision, Inc.)	MB Docket No. 13-317
)	CSR-8866-N
Complaint Regarding Network)	
Non-Duplications Rules)	

To: The Secretary's Office

Attn: William Lake
Chief, Media Bureau

ANSWER

BUCKEYE CABLEVISION, INC.

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January 7, 2014

SUMMARY

Buckeye takes its network non-duplication responsibilities under the FCC's rules very seriously. It immediately addressed Sinclair's claims that Buckeye's Toledo customers were able to access duplicating NBC network programming on December 16 and 17, 2013 and went well beyond what is required by the rules to ensure that NBC programming was not being aired to Buckeye's Toledo cable customers. In this matter, Buckeye has exhibited precisely the "high degree of good faith and cooperation between the cable operators and broadcasters" properly expected by the FCC when network non-duplication issues arise.¹

While Buckeye has sought at all times to uphold both the letter and the spirit of Section 76.92 by providing Sinclair with full non-duplication protection, Sinclair has made no such effort to comply with the rules or cooperate with Buckeye. First, the Complaint seeks sanctions against Buckeye for allegedly violating rights that Sinclair hasn't even taken the time to properly secure. Sinclair never submitted a request for non-duplication protection to Buckeye. The Complaint seeks to rely on (1) a non-duplication request submitted by the previous owners of WNWO-TV that was invalid when received; and (2) an affiliation agreement that does not include Sinclair as a party. The FCC's rules clearly require Sinclair to request non-duplication protection in its own name based on existing contractual rights. Sinclair has failed to comply with those rules and has no standing to demand non-duplication protection based on the documents attached to the Complaint. Although Buckeye continues to afford non-duplication protection to WNWO-TV, the Complaint must be dismissed as a result of this incurable procedural defect.

Second, Sinclair seeks an FCC investigation and a "significant monetary forfeiture and . . . other sanctions" for alleged violations of the rules that Sinclair knows Buckeye already

¹ See, e.g., *Manhattan Cable TV service, Inc.*, 95 FCC 2d 337 (1983).

has corrected and that resulted in no apparent damage to Sinclair. The internal confusion on December 16, 2013 that led to a brief period of duplicating programming being made available to Buckeye's Toledo subscribers on WDIV-TV cable channel 54 was caused by Sinclair's decision to pull WNWO-TV from Buckeye's cable system as part of a retransmission consent dispute. The problem was corrected by Buckeye employees after only two hours and several hours before Sinclair raised a complaint.

Sinclair's December 17, 2013 allegations concerned NBC programming appearing on QAM channel 84.6, which (1) was set up for engineering purposes only; (2) was never advertised to consumers in any way; (3) was not available at all to the 70% of Buckeye customers receiving service using a cable box; and (4) no Buckeye subscriber could have accessed absent considerable effort. Buckeye's establishment of this test feed did not violate Section 76.92 and there is no evidence that any appreciable number of Buckeye subscribers ever did view this channel. Buckeye nonetheless deleted it from its Toledo cable system to ensure that no viewer could view NBC programming while WNWO-TV was asserting non-duplication rights.

Buckeye has not sought at any time to defeat or evade any non-duplication rights that Sinclair may possess. Instead the facts show that Buckeye has tried at every turn to provide WNWO-TV to the maximum extent required by the FCC's rules. Accordingly, the Complaint should be dismissed or denied.

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ANSWER

Buckeye Cablevision, Inc. ("Buckeye"), by its attorneys and pursuant to Section 76.7(b) of the Commission's rules, hereby answers the network non-duplication complaint filed by WNWO Licensee, LLC ("Sinclair") in the above-captioned matter.²

I. INTRODUCTION

The Commission should dismiss or deny Sinclair's Complaint and request for sanctions against Buckeye. The facts in this case show that Sinclair has failed to perfect any right to network non-duplication for WNWO-TV but that Buckeye nonetheless has provided that protection almost without fail. With the exception of a single two-hour period on December 16, 2013, Buckeye has blocked duplicating NBC programming on Detroit station WDIV-TV when carrying that station to its Toledo cable customers. The Commission also should reject Sinclair's effort to turn Buckeye's operation of a test-feed of WDIV-TV for engineering purposes only on a

² See Complaint Seeking Forfeiture Order for Violation of the Commission's Rules, MB Docket No. 13-317, CSR-8866-N, filed December 18, 2013 (the "Complaint"). WNWO Licensee, LLC is a subsidiary of Sinclair Broadcast Group, Inc. ("SBGI"), and the licensee of WNWO-TV, Toledo, Ohio.

channel that was never advertised to consumers into a violation of the network non-duplication rules. Those rules are designed to safeguard broadcasters, not prohibit cable operators from properly engineering their cable systems. And Sinclair received all of the safeguards to which it was entitled under the rules. Buckeye has performed a thorough investigation of Sinclair's network non-duplication complaints, and the results of that investigation are recounted below. At this time, both of Sinclair's complaints have been addressed and further Commission action is unwarranted.

II. BACKGROUND AND RESULTS OF BUCKEYE'S INVESTIGATION.

A. Buckeye's Carriage of NBC Affiliates WNWO-TV and WDIV-TV.

Buckeye operates a cable system serving customers in and around Toledo, Ohio.³ Until December 15, 2013, Buckeye carried both Sinclair's Toledo NBC affiliate, WNWO-TV, and a standard definition feed of the Detroit NBC affiliate, WDIV-TV, to its Toledo cable customers. At midnight on December 15, 2013, Sinclair withdrew its consent to Buckeye's carriage of WNWO-TV. Since that date, Buckeye has not carried WNWO-TV's signal, but it has continued to provide a standard definition version of WDIV-TV to its Toledo customers with the NBC network programming blocked.⁴ Buckeye also continues to provide an unblocked version of

³ Buckeye also operates cable systems in southeast Michigan and Erie County, Ohio, but those cable systems are not involved in the events described in the Complaint. The customers served by the cable system subject to the events described in the complaint are referred to herein as the "Toledo customers."

⁴ Sinclair is simply wrong when it states that "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." *See* Complaint at 2. Buckeye does carry both a standard and high definition feed of WDIV-TV programming to its customers in Monroe County, Michigan, which is located in the Detroit DMA. But its Toledo customers have only ever had access to a standard definition feed of WDIV-TV.

WDIV-TV's signal to its customers in southeast Michigan, which is located in the Detroit DMA, where Sinclair has no non-duplication rights.

Buckeye provides its feed of WDIV-TV on channel 54 of its Toledo cable system. The 70% of Buckeye's Toledo customers that receive service using a cable box will receive WDIV-TV only on channel 54.⁵ The same is true for customers using HD digital terminal adaptors and other digital-to-analog converters. The relatively few customers that obtain service using clear-QAM digital television sets that can receive cable service by plugging their television into a wall outlet are authorized to receive WDIV-TV on channel 84.7.⁶

In addition, between February and mid-December of 2013, Buckeye used channel 84.6 as a test feed of WDIV-TV to trouble-shoot periodic video quality problems that it was having transmitting WDIV-TV's signal to customers. Buckeye established this test feed for engineering purposes only, so that it could assess and remedy the problems with WDIV-TV's signal without interrupting service to customers viewing WDIV-TV on the intended channel 54 (or 84.7). Channel 84.6 was not intended to be viewed by the public, was not available to customers receiving service using a cable box, and was never advertised to any customer. Indeed, Buckeye

⁵ The 70% of customers receiving service with a cable box may have additional cable-connected TV sets in their homes that do not use a box if those additional sets are capable of receiving clear-QAM signals.

⁶ Buckeye's Toledo cable system transmits WDIV-TV on the portion of its cable spectrum that corresponds to channel 84.7. The cable boxes deployed in that system automatically map WDIV-TV to channel 54, which is the channel that Buckeye uses to advertise the availability of WDIV-TV programming to its customers. A customer receiving service with a cable box that has the appropriate type of TV tuner could disconnect the cable box, plug the television into the wall, perform a channel scan, and receive WDIV-TV on channel 84.7.

has confirmed that the only member of its organization who has any recollection that WDIV-TV programming was being tested on channel 84.6 was the engineer who set up the test feed.⁷

B. Buckeye's Historical Provision of Network Non-Duplication Protection for WNWO-TV.

Since late 1995, Buckeye has provided network non-duplication protection to WNWO-TV by blocking NBC programming appearing on WDIV-TV when that signal is carried to Buckeye's Toledo customers.⁸ Buckeye performed these blocks pursuant to network non-duplication requests submitted by the former owner of WNWO-TV, Barrington Broadcasting Group LLC ("Barrington").⁹ In accordance with standard industry practice, Barrington's network non-duplication requests were made pursuant to amendments to Barrington's NBC affiliation agreement that permitted WNWO-TV to request such protection.¹⁰ Pursuant to Barrington's notices, WDIV-TV's NBC programming was blocked on the channels that were advertised and provided to Buckeye's Toledo cable subscribers, *i.e.*, cable box channel 54 and QAM channel 84.7. Because channel 84.6 was not intended for use by consumers, WDIV-TV's NBC programming was not consistently blocked on that channel.¹¹

On November 25, 2013, SBGI completed its purchase of WNWO-TV from Barrington. As a result of the transaction, ownership of WNWO-TV's license was assigned from Barrington's subsidiary Barrington Toledo License LLC ("Barrington Toledo") to SBGI's

⁷ See Declaration of Brad Mefferd, attached as Exhibit 1, at ¶ 18 (the "Mefferd Declaration"); Declaration of Lawrence "Butch" Schmidt, attached as Exhibit 2, at ¶ 7 (the "Schmidt Declaration").

⁸ Buckeye's practice is generally to transmit paid advertising content during the hours where WDIV-TV programming is blocked out.

⁹ See, *e.g.*, Complaint at Exhibit 2.

¹⁰ See, *e.g.*, Complaint at Exhibit 1.

¹¹ See Schmidt Declaration at ¶ 4.

subsidiary WNWO Licensee, LLC.¹² Following completion of the acquisition, neither SBGI nor WNWO Licensee, LLC provided (1) any notice to Buckeye that WNWO-TV's new owner had assumed the station's affiliation agreement with NBC; or (2) any request for non-duplication protection pursuant to a new or renegotiated network affiliation agreement between WNWO-TV and NBC. Nonetheless, Buckeye continued blocking NBC programming on WDIV-TV carried to its Toledo customers.

C. Buckeye's Provision of Non-Duplication Protection for WNWO-TV on December 16, 2013.

As described in the Complaint, at midnight on December 15, 2013, Sinclair revoked consent for Buckeye to carry WNWO-TV.¹³ In anticipation of this event, on Friday, December 13, 2013, Buckeye's Supervisor of Local Stations Operations, Ninette Widman, had sent an informational email to the cable system's weekend operators that included information about the potential impending loss of WNWO-TV's signal.¹⁴ Buckeye's Community Channel Operator received this email and misinterpreted it as an instruction to cease blocking WDIV-TV programming in the event that Buckeye and Sinclair failed to reach a deal by midnight on December 15, 2013.¹⁵ Based on this misunderstanding, she instructed Buckeye's Local Stations Operator to remove the blocking from WDIV-TV's signal if WNWO-TV ceased to be carried. Shortly after midnight, Buckeye's Local Stations Operator executed this instruction and sent an email to, among others, Ms. Widman, explaining that he had removed the blocks from WDIV-

¹² See Application for Consent to Assignment of Broadcast Station Construction Permit or License, BALCDT-20130315ASQ.

¹³ See Complaint at 2-3.

¹⁴ See Declaration of Ninette Widman, attached as Exhibit 3, at ¶ 3.

¹⁵ See *id.* at ¶ 6.

TV programming. The first NBC program to air after Buckeye's removal of the blocks on WDIV-TV was the *Today* Show from 7:00 - 9:00 AM.¹⁶

Upon her return to the office on Monday, December 16, 2013, Ms. Widman reviewed the email from the Local Stations Operator regarding removal of the blocks on WDIV-TV's signal. Ms. Widman at once sought to determine who had issued the instruction to remove the blocks. Upon learning that the instructions had originated with the Community Channel Operator's misunderstanding of her previous instructions, Ms. Widman immediately ordered that the blocks be restored and participated in completing that process. Buckeye's blocking of NBC programming on WDIV-TV was completed at approximately 9:05 AM.¹⁷

At approximately 4:22 PM on December 16, 2013, counsel for Sinclair sent an email to Brad Mefferd, Chief Administrative Officer of Buckeye, attaching a letter requesting that Buckeye cease and desist from carrying WDIV-TV's unblocked signal.¹⁸ The letter specifically referred to Buckeye's lack of blocking on the *Today* show, of which Buckeye already was aware. Buckeye's counsel responded to Sinclair by email on Tuesday, December 17, at approximately 12:35 PM, acknowledging that the *Today* show had been mistakenly unblocked and informing Sinclair that the blocking had been restored. In addition, Buckeye requested evidence that Sinclair was entitled to non-duplication protection in Toledo.¹⁹

D. Sinclair's Allegations of Non-Duplication Violations on December 17, 2013.

At approximately 3:10 PM on December 17, 2013, Mr. Mefferd and counsel for Sinclair and Buckeye held a telephone conference during which Sinclair made new allegations that

¹⁶ See *id.* at ¶¶ 6-7.

¹⁷ See *id.* at ¶¶ 4-6.

¹⁸ See Exhibit 4. See also Mefferd Declaration ¶ 8.

¹⁹ See Exhibit 5. Sinclair did not respond to this request, but Buckeye presumes that Sinclair's basis for asserting non-duplication protection consists of the documents attached to the Complaint.

Buckeye had carried unblocked NBC programming on its WDIV-TV feed throughout the day on December 17, 2013. Buckeye asserted that it had been monitoring channel 54 and that NBC programming was blocked. Buckeye asked Sinclair to confirm that Sinclair was receiving the Toledo feed of WDIV-TV and not a feed from Buckeye's southeast Michigan system where Buckeye lawfully carries an unblocked WDIV-TV signal. Sinclair agreed to determine the channel on which they were receiving the unblocked programming, and Buckeye directed its engineers to closely monitor transmission of WDIV-TV and make sure that the blocking was in place.²⁰

At approximately 5:50 PM, Sinclair contacted Buckeye to inform it that WNWO-TV was receiving WDIV-TV's unblocked signal on channel 84.6. Mr. Mefferd immediately relayed this information to his engineering staff.²¹ Buckeye's engineers identified channel 84.6 as a signal test feed for WDIV-TV that was not intended for customer viewing.²² To ensure that no other customers were able to view WDIV-TV programming on channel 84.6, Buckeye removed that signal feed from its system at approximately 6:45 PM on December 17.²³

III. ARGUMENT

As the foregoing demonstrates, Buckeye has taken all reasonable steps to afford WNWO-TV full network non-duplication protection. In both instances when Sinclair contacted Buckeye alleging a problem, Buckeye has responded immediately to ensure that WNWO-TV was protected. There is simply no basis for Sinclair's claim that Buckeye "willful[ly] and repeated[ly]" violated Section 76.92. In reality, Sinclair never established that it is entitled to the

²⁰ See Mefferd Declaration at ¶¶ 10-11.

²¹ See *id.* at ¶¶ 13-14.

²² See Declaration of James R. Brown, attached as Exhibit 6, at ¶¶ 4, 6 (the "Brown Declaration"); Schmidt Declaration at ¶¶ 9-10.

²³ See Mefferd Declaration at ¶ 15; Brown Declaration at ¶ 5; Schmidt Declaration at ¶ 10.

non-duplication protection Buckeye has afforded it. And, even assuming that Sinclair possesses the non-duplication rights it asserts, Buckeye's violation of the rules was at most *de minimis*.

A. The Complaint Fails to Establish Sinclair's Entitlement to Non-Duplication Protection in Toledo.

Sinclair claims that it is entitled to network non-duplication protection based on a letter dated March 25, 2013, from Barrington, on behalf of Barrington Toledo, to Buckeye, which is attached to the Complaint.²⁴ This letter is ineffective to establish Sinclair's right to non-duplication protection for at least two reasons.

First, the March 25 Letter is defective on its face because it asserted non-duplication rights that Barrington had not yet obtained from NBC. Exhibit 1 of the Complaint includes the amendment to Barrington's NBC affiliation agreement that permits WNWO-TV to seek non-duplication protection.²⁵ That amendment is dated March 27, *two days after* Barrington sent the March 25 Letter demanding non-duplication protection.²⁶ Section 76.94(b) requires broadcasters to give cable operators notice within 60 days of procuring non-duplication protection; it makes no provision for notification *before* such rights are obtained.²⁷ The March 25 Letter flatly misrepresents the facts when it claims that "[t]hese [non-duplication] rights are effective immediately;" it possessed no such rights on March 25, 2013. While Buckeye accepted WNWO-TV's assertion of its non-duplication rights and protected that station following the March 25 Letter, it now appears that WNWO-TV never properly perfected its non-duplication

²⁴ See Complaint at 4 and Exhibit 2 (the "March 25 Letter").

²⁵ See Complaint at Exhibit 1 (the "March 27 Amendment").

²⁶ Sinclair appears to recognize these obvious defects in the March 25 Letter when it asserts that they were "timely and valid" because it was "received by Buckeye by U.S. Mail on March 30, 2014." See Complaint at 2. But the fact that Buckeye received the March 25 Letter after than March 27 Amendment was signed does not cure the fact that the March 25 Letter asserted non-duplication rights it did not possess.

²⁷ 47 C.F.R. §76.94(b).

rights. Because Barrington and Barrington Toledo never properly secured non-duplication rights granted by the March 27 Amendment, those rights expired no later than May 22, 2013 and are now irretrievably lost.²⁸ In any event, the March 25 Letter cannot form the basis for a valid complaint that Buckeye has violated Sinclair's Section 76.92 rights.

Second, even assuming that Barrington Toledo secured non-duplication rights through submission of the March 25 Letter, by rule those rights do not automatically transfer to a new licensee, and Sinclair never asserted such rights on its own behalf after it acquired WNWO-TV in November 2013. Section 76.94(a)(1) requires a valid non-duplication request to include the "name and address of the party seeking non-duplication protection."²⁹ The March 25 Letter seeks non-duplication protection for Barrington and Barrington Toledo, neither of which is "the party seeking non-duplication protection" in the Complaint.³⁰ By the express terms of Section 76.94, whatever non-duplication rights might have been secured by the March 25 Letter expired when the requesting parties – Barrington and Barrington Toledo – ceased to own the station. Sinclair never sent Buckeye a letter asserting non-duplication protection on behalf of WNWO License, LLC, so it never perfected the non-duplication rights for WNWO-TV following its acquisition of the station.³¹

²⁸ See *Northland Cable Television, Inc.* 23 FCC Rcd 7872, 7875 ¶ 10 (Med. Bur. 2008).

²⁹ 47 C.F.R. §76.94(a)(1).

³⁰ See *id.*

³¹ Based on the representations in the Complaint, Buckeye presumes that Sinclair and WNWO Licensee, Inc. have assumed the NBC affiliation agreement and the March 27, 2013 Amendment. Assuming that is the case, WNWO-TV obtained non-duplication rights pursuant to Section 76.92 – if at all -- by virtue of whatever document reflects Sinclair's assumption of those agreements. By the terms of Section 76.94(b), WNWO Licensee, Inc. could not secure non-duplication rights based on that assumption until it provided Buckeye with notice of that event (which notice must be received within 60 days of the assumption). In this case, however, since Barrington Toledo never secured non-duplication rights, Sinclair cannot perfect such rights based on its assumption of Barrington Toledo's NBC affiliation agreement or the March 27 Amendment.

Because the March 25 Letter was ineffective to secure the non-duplication rights of WNWO-TV granted by the March 27 Amendment and because Sinclair has no right to assert any non-duplication rights that were held by Barrington Toledo, the Complaint is incurably defective and must be dismissed.³²

B. Buckeye’s Admitted Lapse in Providing Non-Duplication Protection to WNWO-TV for Approximately 2 Hours on December 16, 2013 Was *De Minimis* and Does Not Justify the Investigation or Fines Requested By Sinclair.

Even if the Complaint established Sinclair’s right to non-duplication protection (and it does not), Sinclair’s claim that Buckeye willfully and repeatedly violated the non-duplication rules is baseless. Buckeye mistakenly carried two hours of duplicating NBC programming on WDIV-TV on December 16, 2013. Its own employees recognized and remedied the error shortly after it occurred and took steps to ensure that it would not be repeated.

Buckeye’s conduct, which afforded Sinclair more protection than it was entitled to under the FCC’s rules, provides no basis for further investigation or forfeiture. Because Buckeye respects both the letter and the spirit of the network non-duplication rules, it intends to continue refraining from transmitting duplicating NBC programming during the pendency of the Complaint.

C. Buckeye’s Use of Channel 84.6 for Engineering Purposes Related to WDIV-TV’s Signal Did Not Violate Section 76.92 of the FCC’s Rules.

Sinclair’s claim that Buckeye’s use of channel 84.6 to test WDIV-TV’s signal violates Section 76.92 also is meritless. Presuming a valid non-duplication request, Section 76.92 prohibits a cable operator from “carry[ing]” duplicating network programming.³³ Buckeye did

³² See *Colonial Cablevision of Revere, Inc.*, 76 FCC 2d 56, 58-60 ¶ 8 (1980) (absent a valid non-duplication request, no violation of the rules occurred and no forfeiture can be issued).

³³ 47 C.F.R. §76.92.

not “carry” WDIV-TV on channel 84.6, it merely transmitted the station’s signal on that frequency for purposes of testing the station’s signal and making adjustments without interrupting service to viewers that were receiving WDIV-TV assigned channel 54. Buckeye’s investigation into this matter indicates that the test feed was established in February of 2013 due to periodic problems with WDIV-TV’s signal quality and that it was only ever used to adjust the WDIV-TV feed to solve those problems.³⁴ Section 76.92 was adopted to protect broadcasters’ network non-duplication rights, not to prohibit cable operators from making legitimate signal adjustments in the most technically efficient, customer conscious manner available.

Moreover, unlike every signal that is actually “carried” on Buckeye’s system, Buckeye did not make channel 84.6 available and easily accessible to its subscribers. For Buckeye customers receiving service using a cable box (some 70% of customers), channel 84.6 was not accessible at all – the box tuned WDIV-TV on channel 84.7 and automatically mapped that signal to channel 54 for viewing. Buckeye’s cable boxes do not provide the functionality necessary to directly tune to channel 84.6. Customers using a QAM-capable TV could directly tune to channel 84.6 and receive WDIV-TV programming. But Buckeye never advertised the availability of WDIV-TV on channel 84.6; it never instructed customers to tune their televisions to that channel to receive WDIV-TV; and, prior to December 17, 2013, it was unaware that any customer was, in fact, tuning WDIV-TV on channel 84.6.³⁵ This conduct is the opposite of “willful and repeated” efforts to violate Sinclair’s network non-duplication rights. Buckeye was merely trying to operate its system in its customers’ best interests.

When Sinclair reported at 5:50 PM on December 17, 2013 that Buckeye was transmitting unblocked programming on channel 84.6, Buckeye immediately directed its engineers to

³⁴ See Schmidt Declaration at ¶¶4-6; Brown Declaration at ¶6; Mefferd Declaration at ¶18.

³⁵ See Mefferd Declaration at ¶18.

investigate and address that allegation.³⁶ Upon learning that persons other than Buckeye engineers were gaining access to channel 84.6, Buckeye's engineers discontinued the test feed. Channel 84.6 was deleted at 6:45 PM on December 17, 2013, less than an hour after Sinclair identified the problem.³⁷

While Buckeye maintains that the test feed of WDIV-TV did not violate Section 76.92, Buckeye regrets that any of its customers were able to obtain NBC programming on channel 84.6. Buckeye is unaware of the radio broadcast alleged in the Complaint,³⁸ but Buckeye can only presume that one of its customers using a QAM tuner performed a channel scan, discovered the test feed of WDIV-TV, and then chose to advertise its availability over the radio. That is very unfortunate, and Buckeye has made certain that customers will not be able to access the WDIV-TV test feed in the future. But the unauthorized acts of Buckeye's customers cannot convert Buckeye's perfectly legitimate test feed transmission of WDIV-TV into a violation of Section 76.92 of the rules, let alone the "willful and repeated" violations that Sinclair alleges. And, the Complaint does not provide any evidence that any more than a handful of Buckeye customers actually viewed duplicating NBC programming on channel 84.6. For its part, Buckeye has received no reports of such viewing.³⁹

At the same time, Buckeye has concluded that the practice of setting up a test feed and leaving it operational for periodic future use is not an optimal engineering practice.⁴⁰ Because Buckeye is committed to ensuring that the stations it carries are granted the full non-duplication rights to which they are entitled, Buckeye has initiated a new approval process for any future

³⁶ See *id.* at 13-14.

³⁷ See Mefferd Declaration at ¶ 15; Brown Declaration at ¶ 5; Schmidt Declaration at ¶ 10.

³⁸ Complaint at 3-4 and Declaration of Christopher J. Topf at ¶ 7.

³⁹ See Mefferd Declaration at ¶ 18.

⁴⁰ See Brown Declaration at ¶ 8.

EXHIBIT

1

DECLARATION OF BRAD MEFFERD

1. My name is Brad Mefferd and I am Chief Administrative Officer of Buckeye Cablevision, Inc. ("Buckeye"). I have been employed by Buckeye for 23 years.
2. As part of my duties with Buckeye, I am responsible for overseeing the company's compliance with FCC rules, including the network non-duplication rules. From December 16, 2013 to the present, I have conducted an investigation into allegations by WNWO-TV Licensee, Inc. ("Sinclair") that Buckeye violated the station's network non-duplication rights.
3. In addition, I was informed of and involved with Buckeye's initial response to Sinclair's allegations.
4. Since late 1995, Buckeye has provided network non-duplication protection to NBC affiliate WNWO-TV, Toledo, Ohio, against duplicating NBC programming on WDIV-TV, Detroit, Michigan. This protection was provided pursuant to requests by WNWO-TV's former owner, Barrington Broadcasting Group LLC ("Barrington") and its operating affiliate Barrington Toledo Licensee LLC ("Barrington Toledo"). The most recent request received by Buckeye was sent on March 25, 2013 (the "March 25 Letter"). That letter purported to be based on rights granted by an amendment to Barrington Toledo's affiliation agreement with NBC. Buckeye has at all times respected this request and provided the non-duplication protection requested in the March 25 Letter.
5. I have reviewed the Complaint submitted by Sinclair in this matter. It includes the amendment to Barrington Toledo's affiliation agreement that supposedly established Barrington Toledo's non-duplication rights asserted in the March 25 Letter. The amendment is dated March 27, 2013, which means that Barrington asserted rights in the March 25, 2013 Letter that it did not have. In any event, Buckeye has been and continues to provide non-duplication protection to WNWO-TV based on the March 25 Letter.
6. I am aware that in November 2013, Sinclair Broadcast Group, Inc. ("SBGI") completed its purchase of WNWO-TV's license from Barrington. I am also aware that as part of that transaction, ownership of WNWO-TV's license was assigned from Barrington Toledo to SBGI's affiliate WNWO-TV Licensee, Inc. Buckeye has never received a network non-duplication request for WNWO-TV from either SBGI or WNWO-TV Licensee, Inc. Nonetheless, Buckeye has and continues to provide WNWO-TV with network non-duplication protection.
7. At approximately 12:00 PM on December 16, 2013, Ninette Widman informed me that an operator's error had allowed unblocked NBC programming to air on WDIV-TV cable system serving customers in and around Toledo between approximately 7:00 AM and 9:00 AM on December 16, 2013. She assured me that the problem had been corrected and would not recur.
8. At 4:22 PM on December 16, 2013, I received an email from counsel for Sinclair which included a letter complaining that the *Today* show had aired unblocked on WDIV-TV. The letter

was also copied to Buckeye's counsel, Chris Cinnamon of the law firm Cinnamon Mueller. I conferred with Mr. Cinnamon and explained the situation to him.

9. At 12:35 PM on December 17, 2013, Mr. Cinnamon responded to Sinclair by email explaining that the *Today* show had aired unblocked due to operator error and requesting that Sinclair provide a copy of the notice on which it was basing its assertion of non-duplication rights. Sinclair did not respond to this request.

10. At approximately 3:10 PM on December 17, 2013, Mr. Cinnamon and I participated in a telephone conference with Barry Faber and David Gibber, representing Sinclair. Mr. Faber claimed that Buckeye had aired unblocked WDIV-TV programming on a high-definition feed throughout the day on December 17, 2013. He also claimed that they had recordings to prove that Buckeye was airing this programming without blocks. I responded that I did not believe that to be the case because Buckeye does not carry a high definition feed of WDIV-TV to its Toledo customers and that I had personally confirmed that program blocking was in place at approximately 1:45 PM on December 17, 2013. I also asked them to confirm that they were not receiving a WDIV-TV feed from Buckeye's southeast Michigan system, where Buckeye lawfully carries unblocked NBC programming on WDIV-TV. Sinclair's representatives agreed to check on the matter and provide additional information.

11. At approximately 4:00 PM, I directed Buckeye staff to review Buckeye's carriage of WDIV-TV to Toledo customers and confirm that the appropriate channel blocks were in place.

12. By approximately 5:15 PM, Buckeye's staff completed its internal checks and confirmed that WDIV-TV programming was being blocked on cable box channel 54 and QAM channel 84.7.

13. At approximately 5:50 PM, Mr. Gibber of Sinclair informed me by telephone that Sinclair was receiving unblocked WNWO-TV programming on QAM channel 84.6. He reiterated that Sinclair was recording the programming for purposes of filing a complaint.

14. I immediately relayed this information to Buckeye staff for additional investigation. Buckeye's engineers confirmed that unblocked NBC programming was available on QAM channel 84.6.

15. To ensure that Buckeye customers could not view unblocked NBC programming on QAM channel 84.6, that channel was deleted from Buckeye's system serving its Toledo customers at approximately 6:45 PM on December 17, 2013.

16. At 6:57 PM, I received confirmation from Buckeye engineers that unblocked NBC programming was no longer being transmitted on QAM channel 84.6. I then sent an email to Mr. Gibber and WNWO-TV General Manager Chris Topf requesting that they check to confirm that NBC programming was no longer available on QAM channel 84.6.

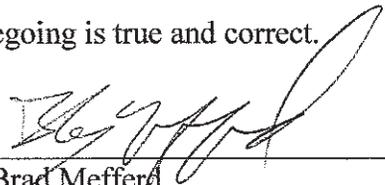
17. Subsequent investigation by Buckeye's engineering staff has revealed that QAM channel 84.6 was operated as a "test feed" to trouble-shoot problems with Buckeye's carriage of WDIV-TV without interrupting service to consumers.

18. Prior to December 17, 2013, I was not aware that Buckeye was operating a test feed of WDIV-TV on QAM channel 84.6. Buckeye never advertised WDIV-TV as being available on QAM channel 84.6 and never intended for customers to tune to that channel. After a thorough investigation, Buckeye has uncovered no customer inquiries or complaints about WDIV-TV programming on QAM channel 84.6. Indeed, Buckeye has not been able to identify anyone in the Buckeye organization that was aware of the test feed on QAM channel 84.6 other than the engineer who set it up in February of 2013, Lawrence "Butch" Schmidt.

19. I have reviewed the foregoing Answer and the facts contained therein are consistent with my personal knowledge of these events and with those facts established through Buckeye's investigation of this matter.

20. The facts contained herein are true and correct to the best of my knowledge, information, and belief formed after reasonable inquiry.

21. I declare under penalty of perjury that the foregoing is true and correct.



Brad Mefferd
Chief Administrative Officer
Buckeye Cablevision, Inc.
5555 airport Highway, Suite 110
Toledo, OH 43615
419-724-7218

Executed on: January 3, 2014

EXHIBIT

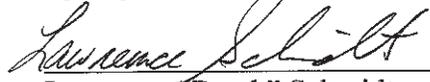
2

DECLARATION OF LAWRENCE "BUTCH" SCHMIDT

1. My name is Lawrence Schmidt and I am known by the nickname "Butch." I am the Systems Engineering Supervisor for Buckeye Cablevision, Inc. ("Buckeye"). I have been employed by Buckeye for the past 14 years.
2. As part of my duties with Buckeye, I am responsible for helping maintain the signal quality of television broadcast stations carried to Buckeye's customers in Toledo, Ohio.
3. In or around February 2013, I became aware that Buckeye was having difficulty maintaining the signal quality of WDIV-TV, Detroit, Michigan, one of the television broadcast stations carried on Buckeye's cable systems serving customers in and around Toledo, Ohio.
4. To remedy this problem without interrupting WDIV-TV programming being carried to Buckeye's customers, I established a test frequency at the RF channel 84.6 that consisted of a duplicate stream of WDIV-TV programming. This channel was not intended to be viewed by customers. It was established solely for the purpose of determining the source of the problems with Buckeye's transmission of WDIV-TV and testing potential solutions to those problems. Because it was not intended to be received by consumers, I did not establish any blocking for NBC programming airing on the test channel.
5. The testing performed on the channel 84.6 program stream involved adjusting the recoding rate and priority of Buckeye's DM6400 multiplexer.
6. My records do not reflect the precise date on which I established the WDIV-TV test frequency or the dates on which signal tests have been performed. Unfortunately, the electronic logs maintained by the DM6400 multiplexer last for only 48 hours, so I am unable to determine the dates of those events.
7. I did not inform anyone at Buckeye that I had established the test frequency at channel 84.6 because I believed that those actions were within the scope of my normal duties and I did not believe that I needed the approval of my superiors to perform this task. To my knowledge, no one at Buckeye other than me was aware of the test frequency at channel 84.6.
8. On December 17, 2013, I was asked by Brad Mefferd and Jim Brown to investigate allegations by Toledo NBC affiliate WNWO-TV that Buckeye was violating its network non-duplication rights.
9. At approximately 6:00 PM on December 17, 2013, I was informed that WNWO-TV claimed it was viewing NBC programming on QAM channel 84.6, the test feed for WDIV-TV described above.
10. After confirming that unblocked NBC programming was available on Channel 84.6, I supervised the removal of channel 84.6 from Buckeye's Toledo cable system. That operation was completed at approximately 6:45 PM.

11. The facts contained herein are true and correct to the best of my knowledge, information, and belief formed after reasonable inquiry.

12. I declare under penalty of perjury that the foregoing is true and correct



Lawrence "Butch" Schmidt
Systems Engineering Supervisor
Buckeye Cablevision, Inc.
4818 Angola Road
Toledo, OH 43615
419-724-3778

Executed on: January 3, 2014

EXHIBIT

3

DECLARATION OF NINETTE WIDMAN

1. My name is Ninette Widman and I am the Supervisor, Local Stations Operations for Buckeye Cablevision, Inc. ("Buckeye"). I have been employed by Buckeye for the past 15 years.
2. As part of my duties, I am responsible for ensuring that Buckeye complies with network non-duplication requests submitted by television broadcast stations carried on Buckeye's cable system to customers in and around Toledo, Ohio. I supervise the system operators that apply blocking to NBC programming appearing on WDIV-TV when that programming is carried to Toledo customers on channel 54.
3. On Friday, December 13, 2013, I was informed that Buckeye was likely to be forced to drop television station WNWO-TV at midnight on Sunday, December 15, 2013. As is my usual practice, before leaving work for the weekend, on December 13, I sent an informational email around to the weekend operators under my supervision informing them of various system issues, I included in this email a note regarding the potential discontinuation of carriage of WNWO-TV and a direction to await further instructions regarding whether or not there would be any changes to the program blocking performed on WDIV-TV's signal. I made it clear, both in my email and in oral instructions to the operators on duty that they should not change the channel blocking unless they received instructions to do so.
4. When I returned to work at approximately 8:45 AM on Monday, December 16, 2013, I reviewed an email that I had received at 4:32 AM that day from one of the weekend operators informing me that channel blocking had been removed from WDIV-TV until 11:00 PM on December 16, 2013. I was aware that the Today show had started at 7:00 AM and that it should have been blocked absent further instructions.
5. I immediately contacted the system operators on duty to determine who had issued the orders to remove the blocking from WDIV-TV. After speaking with several operators, I was unable to determine that a valid order had been issued to unblock WDIV-TV. Accordingly, I worked with the operators on duty to restore the blocking to WDIV-TV programming. The channel blocking was restored at approximately 9:05 AM.
6. After further investigation, I determined that the order to remove the blocking from WDIV-TV had been issued by Buckeye's Community Channel Operator. She had misunderstood my December 13, 2013 message as instructing the weekend operators to remove the blocking from WDIV-TV if Buckeye dropped WNWO-TV.
7. As a result of this incident, WDIV-TV programming aired unblocked on Buckeye's cable system serving Toledo customers for approximately 2 hours and 5 minutes, from 7:00 AM to 9:05 AM. Since that time, the blocking of NBC programming on WDIV-TV has been carried out continuously.
8. The facts contained herein are true and correct to the best of my knowledge, information, and belief formed after reasonable inquiry.

9. I declare under penalty of perjury that the foregoing is true and correct


Ninette Widman
Supervisor, Local Stations Operations
Buckeye Cablevision, Inc.
4818 Angola Road
Toledo, OH 43615
419-724-3871

Executed on: January 3, 2014

EXHIBIT

4

SINCLAIR BROADCAST GROUP

DAVID B. GIBBER
Legal Counsel
Direct Dial (410) 568-1693
dbgibber@sbgstv.com

December 16, 2013

VIA EMAIL AND UPS

Brad Mefferd
5555 Airport Hwy.
Suite 110
Toledo, OH 43615

Dear Brad:

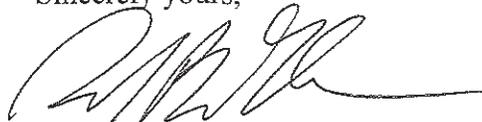
We have been advised that in the morning of December 16, 2013, Buckeye Cablevision violated the network non-duplication protection of WNWO-TV to which it is entitled pursuant to §§47 C.F.R. 76.92 et al. by carrying the "The Today Show" in the Toledo DMA on WDIV-TV which is licensed to Detroit, Michigan. This is a clear willful violation of the FCC rules.

We are writing to demand that you cease and desist this violation of the FCC rules and provide WNWO-TV with the network non-duplication protection it is entitled pursuant to the FCC rules. In addition, if this occurs again we intend to take all appropriate actions to protect our station's valuable programming, including, filing a complaint with the FCC regarding your unlawful actions and collecting all damages to which we are entitled.

This letter does not constitute an exhaustive statement of our legal position. In writing this letter, we do not waive any rights or remedies to which we are entitled, which rights and remedies are expressly reserved.

If you have any questions please contact the undersigned.

Sincerely yours,



David B. Gibber
Legal Counsel

cc: Chris Cinnamon

EXHIBIT

5

Brad Mefferd

From: Christopher Cinnamon <cccinnamon@cm-chi.com>
Sent: Tuesday, December 17, 2013 12:35 PM
To: 'David B. Gibber'
Cc: Brad Mefferd
Subject: RE: Buckeye/WNWO - initial response to alleged Network Non-Duplication Violation

Importance: High

David:

In response to your December 16 letter, Buckeye management was unaware that WDIV had been unblocked in the Toledo DMA, traced the situation to a technician error, and has reblocked the station.

Please note: This action should not be construed as a recognition of any exclusivity rights currently claimed by SBG, and Buckeye reserves all rights under FCC regulations with respect to broadcast exclusivity and exceptions thereto.

For our records, please provide a copy of the 47 CFR 76.94 notice on which SBG bases this assertion of nonduplication rights.

Regards,

Chris Cinnamon
Cinnamon Mueller
307 North Michigan Ave.
Suite 1020
Chicago, IL 60601
P: (312) 372-3930
F: (312) 372-3939
cccinnamon@CinnamonMueller.com



This electronic mail transmission may contain confidential or privileged information. If you believe that you have received this message in error, please notify the sender by reply transmission and delete the message without copying or disclosing it.

From: David B. Gibber [<mailto:DBGibber@sbgstv.com>]
Sent: Monday, December 16, 2013 3:22 PM
To: Bradley Mefferd (bmefferd@cablesystem.com)
Cc: Christopher Cinnamon (cccinnamon@cm-chi.com)
Subject: Network Non-Duplication Violation

Brad – please see the attached letter that was also sent via UPS.

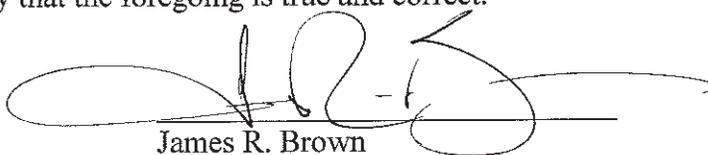
EXHIBIT

6

DECLARATION OF JAMES R. BROWN

1. My name is James R. Brown, and I am the Vice President of Engineering for Buckeye Cablevision, Inc. ("Buckeye"). I have been employed by Buckeye for 30 years.
2. As part of my duties with Buckeye, I oversee all aspects of the engineering of Buckeye's cable system serving customers in and around Toledo, Ohio.
3. On December 17, 2013, I was asked by Brad Mefferd to investigate allegations that Buckeye was violating the network non-duplication rights of Toledo NBC affiliate WNWO-TV.
4. I was informed that WNWO-TV claimed it could view unblocked NBC programming on QAM channel 84.6. At approximately 6:15 PM on December 17, 2013, my staff confirmed that WDIV-TV could be viewed on QAM channel 84.6.
5. At approximately 6:45 PM, we removed QAM channel 84.6 from the Buckeye system serving Toledo, Ohio.
6. Subsequent investigation has revealed that QAM channel 84.6 was established as a "test feed" for WDIV-TV to permit trouble-shooting of video quality issues with WDIV-TV signal without interrupting service to customers. The "test feed" was established in or around February 2013. Prior to December 17, 2013, I was unaware of the QAM channel 84.6 test feed.
7. During the time that QAM channel 84.6 was on the Buckeye system, it was inaccessible to any customer receiving service using a cable box. Currently, approximately 70% of Buckeye customers take service using a cable box. Only customers using a digital television with a QAM tuner plugged directly into the wall could have gained access to WDIV-TV programming on QAM channel 84.6. To do so, they would have been required to perform a channel scan, saving that channel into their receiver. Buckeye never intended for viewers to receive WDIV-TV programming on QAM channel 84.6, and Buckeye discontinued the test feed as soon as it was informed that customers were doing so.
8. This incident has prompted a review of Buckeye's internal engineering practices, and the company has determined that the events that led to WDIV-TV airing without channel blocks was the result of less than optimal internal procedures. To ensure that no similar event occurs in the future, Buckeye has adopted new procedures that will ensure that network changes like the establishment of a test feed are subject to greater internal oversight and review through the company's Methods of Procedures ("MOPs") process. Use of the MOPs process will ensure that everyone in the engineering department is aware of important network changes and that such changes are made only subject to peer review and my ultimate approval.
9. The facts contained herein are true and correct to the best of my knowledge, information, and belief formed after reasonable inquiry.

10. I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read 'J.R. Brown', is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke extending to the right.

James R. Brown
Vice President of Engineering
Buckeye Cablevision, Inc.
4818 Angola Road
Toledo, OH 43615
419-724-3820

Executed on: January 3, 2014

CERTIFICATE OF SERVICE

I, Tammi Foxwell, s legal secretary with the law firm of Cooley LLP hereby certify that copies of the foregoing "Answer" were served as specified below on the 7th day of January 2014 to the following:

Clifford M. Harrington*
Paul A. Cicelski
Pillsbury Winthrop Shaw Pittman
2300 N Street, NW
Washington, DC 20037

Mary Beth Murphy**
Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Steven Broeckaert**
Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Simon Banyai**
Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554



Tammi Foxwell

* Via Electronic Mail and U.S. Mail

** Via Electronic Mail and Hand Delivery