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From: **Rick Bellizzi** <[rick.bellizzi@gmail.com](mailto:rick.bellizzi@gmail.com)>

Date: Tue, Feb 11, 2014 at 2:25 PM

Subject: WEYW - Channel 19 Appeal

To: [Steven.Broeckaert@fcc.gov](mailto:Steven.Broeckaert@fcc.gov)

Dear Mr. Broeckaert,

As you are aware, WEYW In January of this year filed an appeal in response to the FCC 's denial of our must carry request in December 2013. As the original complaint states, WEYW is the only English language low power station in Monroe county. The other, full power English language stations are located 150 miles away in Miami and do not service Monroe County with local content. The other two low power stations granted must carry in 2006 do not service the community of origin either, they are also located in Miami and broadcast 100% Spanish language. It is obvious these stations were granted a waiver to move these studios to Miami as there were not enough Spanish language stations in the Miami market, where 65% of the population is Spanish speaking. As you are aware, the cable company installed cable in this county in the early 1990's. The translator stations in the Keys, broadcasting the Miami stations were then put in silent domain. As the other low power stations still do not give the county full over the air coverage, my intent is to put four low power translator stations 25 miles apart from Key West to Mile Marker 100, broadcasting seven streams of SD video to cover the entire population of the keys over the air. As you are aware, we are in hurricane prone area, and when hurricanes have come through in the past, ie: Andrew, Georges and Wilma, the cable system has been taken down. It can take as much as 3-6 weeks to restore the cable system. With our over the air broadcast, we will be able to continue full coverage to the county to anyone with an indoor antenna. All transmitter sites will have backup generators and fiber optic connections to keep them on the air with any loss of power. We will be the only station with the ability to provide over the air emergency alert broadcasts. The only emergency broadcast available in a power outage at this time in the keys is FM radio, no one station covers the entire county. We currently provide the only local content to Monroe County. This is filling a crucial gap where no one else is providing service in the event of an emergency to our community.

The list of licenses that will provide this over the air network is below:

WEYW	Channel 19 @ mm 4
WTVK -	Channel 31 @mm 20
W18DU-D	Channel 18 @mm 60
W20DT	Channel 20 @mm 100

We have two additional CP permits, to be constructed, additionally we have:

WDFL - Channel 18 @mm150

This will allow us to have the only stations providing full indoor coverage for television for a broadcast range of 200 miles.

One of our CP permits is about to expire. We need to begin constructing this network of translators, your decision to grant our must carry will give us the ability to proceed with this endeavor. This will be a costly process, but I believe it to be critical for the Miami DMA and Monroe County to have this network of stations, to inform the public if and when an emergency should arise.

If you have any further questions, please call me.

Best regards,

**RICK BELLIZZI**

**WEYW CHANNEL 19**

**Key West Studio**

**5300 US HWY 1**

**KEY WEST, FL 33040**

**305.896.0650**

**RICK.BELLIZZI@GMAIL.COM**

**North Miami Studio**

**14901 N.E. 20th Avenue**

**North Miami, FL 33181**

**305.424.4026**

----- Forwarded message -----

From: **Rick Bellizzi** <[rick.bellizzi@gmail.com](mailto:rick.bellizzi@gmail.com)>

Date: Fri, Feb 14, 2014 at 12:34 PM

Subject: WCAY complaint in Federal Court

To: [Steven.Broeckaert@fcc.gov](mailto:Steven.Broeckaert@fcc.gov)

Dear Mr. Broeckaert,

On this past Tuesday, I sent you an email outlining the necessity of low power television in the Florida Keys. Then next day, Mary Sporacio from WTVK sent you her email regarding the same issues with Comcast. Now, today, I am sending you a copy of a complaint filed in Federal Court from WCAY this past August with yet again the same issues of poor practices with Comcast. WCAY bypassed the FCC on this complaint because they realized that maybe the commission has no real power over these issues. It is ironic that Comcast is now requesting to purchase Time Warner, making them an even bigger monopoly in the cable industry. Soon, if this conglomerate is allowed to continue domination of how we watch television, there will be no purpose for over the air television - full or low power. It appears, at least in our little corner of the world, that the cable industry dominates not only what is seen on television, but they also appear to be doing their best to eliminate free over the air television.

Please read WCAY's complaint, attached below and if necessary, I can provide you with two additional stations stories, who are now, also, out of business in Monroe County.

Thank you for your time.

**RICK BELLIZZI**

**WEYW CHANNEL 19**

**Key West Studio**

**5300 US HWY 1**

**KEY WEST, FL 33040**

**305.896.0650**

**[RICK.BELLIZZI@GMAIL.COM](mailto:RICK.BELLIZZI@GMAIL.COM)**

**North Miami Studio**

**14901 N.E. 20th Avenue**

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**305.424.4026**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

KEY WEST DIVISION  
CASE NO. 13-10119-CIV-MARTINEZ-McALILY

BEACH TV CABLE CO., INC.  
D/B/A KEY TV

Plaintiff

v.

COMCAST OF FLORIDA/GEORGIA, LLC  
D/B/A COMCAST and JOHN DOE

Defendants

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**FIRST AMENDED COMPLAINT**

Now comes Plaintiff Beach TV Cable Co., Inc. d/b/a Key TV ("Key TV") by its attorney and alleges as follows:

**Parties And Jurisdiction**

1. Key TV is a Florida corporation with its principal place of business in Florida.
2. Defendant Comcast of Florida/Georgia, LLC d/b/a Comcast ("Comcast") is a Delaware limited liability company with its principal place of business in Pennsylvania.
3. Defendant John Doe ("John Doe") is an unknown individual with managerial responsibility for Comcast. John Doe is, upon information and belief, a resident of Pennsylvania.
4. The Court has jurisdiction over the claims in this case pursuant to 28 U.S.C. §1332 as there is diversity of citizenship between the parties and the amount in

controversy exceeds \$75,000 exclusive of costs and interest.

5. The Court has jurisdiction over the claims in this case pursuant to 28 U.S.C. §1331 as Key TV's claims arise under the laws of the United States.

#### **Facts**

6. Key TV owns and operates a television station serving the Florida Keys using the call letters WCAY-CD, Channel 36.

7. Key TV is licensed by the Federal Communications Commission ("FCC") to broadcast over-the-air in parts of Monroe County.

8. The programming broadcast by Key TV pursuant to its license consists of locally originated programming directed to residents and tourists in the Florida Keys (the "Key TV Programming").

9. Specifically, but not by way of limitation, the Key TV Programming consists of locally produced videos that feature local restaurants, hotels, events, facilities, activities, news, weather and other information that is of interest to residents and tourists in the Florida Keys.

10. Comcast owns and operates a cable television system that serves Monroe County Florida, including the Florida Keys (the "Cable System").

11. Starting on or about January 1, 2008, Key TV and Comcast entered into an agreement pursuant to which Defendant carried Key TV Programming on the Cable System as required by 47 U.S.C. §532 (the "2008 Agreement"). A copy of the January 1, 2008 agreement is attached as Exhibit "A."

12. An agreement required by 47 U.S.C. §532 is commonly known as a Leased Access Agreement. The terms and conditions of a Leased Access Agreement, including

rates, are regulated by 47 U.S.C. §532 and the FCC.

13. The 2008 Agreement is a Leased Access Agreement.

14. From 2008 through 2012, Comcast carried Key TV Programming on the Cable System pursuant to the 2008 Agreement and 47 U.S.C. §532.

15. From 2008 through 2012, Comcast received from Key TV cash and advertising services having a total value in excess of \$871,000 for the carriage of Key TV Programming in on the Comcast Cable System.

16. The consideration received by Comcast exceeded the charges permitted by the FCC and 47 U.S.C. §532 in an amount to be determined but at least \$283,000.

17. Key TV has been damaged by Comcast's unlawful receipt of consideration in excess of the amounts permitted by law in an amount to be determined but at least \$283,000.

18. In or about March 2012, Comcast called Key TV and advised Key TV that Comcast had overcharged Key TV for the carriage of Key TV Programming on the Cable System from 2008 to March 2012.

19. Key TV provided advertising services to Comcast from 2010 through 2012 having a total value of at least \$258,000 (the "Advertising Charges").

20. Comcast knew about and accepted the advertising services covered by the Advertising Charges.

21. Comcast is liable for payment of the Advertising Charges pursuant to the 2008 Agreement and 42 U.S.C §532.

22. Comcast refuses to accept responsibility for payment of the Advertising Charges.

23. Upon information and belief, Comcast knew prior to March 2012 that it was overcharging Key TV for the carriage of Key TV Programming on the Cable System.

24. Upon learning of the overcharges, Comcast had a duty to immediately notify Key TV about the overcharges.

25. Comcast failed to immediately notify Key TV about the overcharges.

26. Upon learning of the overcharges, Comcast had a duty to promptly remit all undisputed overcharges to Key TV.

27. Comcast failed to promptly remit undisputed overcharges to Key TV. Instead, Comcast retained the undisputed overcharges and used them as “leverage” to try and negotiate a release from Key TV for all claims including, without limitation the Advertising Charges.

28. Comcast also used the threat of refusing to continue carriage of Key TV Programming on the Cable System pursuant to the 2008 Agreement and 47 U.S.C §532 as leverage to negotiate a release from Key TV for all claims including, without limitation the Advertising Charges.

#### **COUNT ONE – BREACH OF CONTRACT**

29. Key TV repeats and realleges ¶¶1 to 28.

30. Comcast breached the 2008 Agreement.

31. Key TV has been damaged as a direct and proximate result of Comcast’s breach in an amount to be determined but at least \$283,000.

**WHEREFORE** Key TV respectfully requests the entry of judgment in its favor against Comcast for damages in an amount to be determined but at least \$283,000

together with the award of interest, costs, attorneys' fees and such other relief as the Court deems just and proper.

**COUNT TWO – UNJUST ENRICHMENT**

32. Key TV repeats and realleges ¶¶ 1 to 4; 6 to 10; 15; 19; 20 and 22.

33. Comcast has been unjustly enriched by receiving advertising services from Key TV having a value to be determined but at least \$258,000.

34. Key TV does not have an adequate remedy at law.

**WHEREFORE** Key TV respectfully requests the entry of judgment in its favor against Comcast for restitution in an amount to be determined but at least \$258,000 together with the award of interest, costs, attorneys' fees and such other relief as the Court deems just and proper.

**COUNT THREE – VIOLATION OF 47 U.S.C. §532 BY OVERCHARGING**

35. Key TV repeats and realleges ¶¶ 1 to 28.

36. Comcast violated 47 U.S.C. §532 by charging and collecting excessive fees from Key TV for the carriage of Key TV Programming on the Cable System.

37. Key TV has been damaged by the illegal overcharges in an amount to be determined but at least \$283,000.

**WHEREFORE** Key TV respectfully requests the entry of judgment in its favor against Comcast for an amount to be determined but at least \$283,000 together with the award of interest, costs, attorneys' fees and such other relief as the Court deems just and proper.

**COUNT FOUR – VIOLATION OF 47 U.S.C. §532 BY FAILURE TO NOTIFY**

38. Key TV repeats and realleges ¶¶1 to 28.

39. Comcast violated 47 U.S.C. §532 by failing to immediately notify Key TV about the overcharges.

40. Key TV has been damaged by Comcast's failure to notify Key TV about the overcharge in an amount to be determined but at least \$100,000 based on the judgment rate of interest on the overcharges.

**WHEREFORE** Key TV respectfully requests the entry of judgment in its favor against Comcast in an amount to be determined but at least \$100,000 together with the award of interest, costs, attorneys' fees and such other relief as the Court deems just and proper.

**COUNT FIVE – VIOLATION OF 47 U.S.C. §532 BY FAILURE TO REMIT**

41. Key TV repeats and realleges ¶¶1 to 28.

42. Comcast violated 47 U.S.C. §532 by failing to promptly remit all undisputed overcharges to Key TV.

43. Key TV has been damaged by Comcast's failure to promptly remit all undisputed overcharges to Key TV in an amount to be determined but at least \$100,000 based on the judgment rate of interest on the amounts Comcast failed to promptly remit.

**WHEREFORE** Key TV respectfully requests the entry of judgment in its favor against Comcast in an amount to be determined but at least \$100,000 together with the award of interest, costs, attorneys' fees and such other relief as the Court deems just and proper.

**COUNT SIX – VIOLATION OF 47 U.S.C. §532 BY REFUSING TO  
CARRY KEY TV PROGRAMMING IN HD FORMAT**

44. Key TV repeats and realleges ¶¶1 to 28.

45. In *In Re Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Leased Commercial Access*, Second Report and Order and Second Order on Reconsideration of the First Report and Order, FCC 97-27, the FCC said at ¶99:

[S]o long as an operator's available leased access capacity is sufficient to satisfy the current demand for leased access, all leased access requests must be accommodated as expeditiously as possible, unless the operator refuses to transmit the programming because it contains obscenity or indecency. We believe that such an approach is the most appropriate method of assuring that cable operators comply with [47 U.S.C. §532(c)(2)], which explicitly restricts operators' exercise of editorial control over leased access programming. [47 U.S.C. §532(c)(2)] provides that "a cable operator shall not exercise any editorial control over any video programming provided pursuant to this section, or in any other way consider the content of such programming, except in the case of programming containing obscenity or indecency, or to the minimum extent necessary to set a reasonable price." We believe that requiring operators to accommodate all leased access requests when the programming does not contain obscenity or indecency, so long as there is available capacity, will most effectively restrict operators' exercise of editorial control, without impinging upon their discretion with regard to price and sexually-oriented programming. We also believe that such an approach will further the statutory objective to promote competition because it will reduce an operator's ability to select leased access programming based on anti-competitive motives. [emphasis added]

46. 47 U.S.C. §532 places Comcast "in the position of a common carrier" regarding the carriage of programming on leased access channels, *Time Warner Entertainment Co., L.P. v. F.C.C.*, 93 F.3d 957, 968 (D.C. Cir. 1996).

47. "The general principle embodied in the leased access rules is that cable operators must make available for leased access programming the same type of access that is made available on their system for the distribution of non-leased access

programming.” *In the Matter of Engle Broadcasting v. Comcast of Southern New Jersey, Inc. Commercial Leased Access*, Memorandum Opinion and Order, DA 01-2274, Released: October 2, 2001 at ¶7.

48. 47 C.F.R. §76.971 states “[c]able operators . . . may not unreasonably refuse to cooperate with a leased access user in order to prevent that user from obtaining channel capacity.”

49. Under 47 U.S.C. §532, as interpreted by the FCC and the Courts, and 47 C.F.R. §76.971, it is unreasonable for Comcast to refuse carriage of Key TV Programming on the Cable System on the same terms and conditions as Comcast carries programming by an arrangement other than a Leased Access Agreement so long as:

- a. Comcast has sufficient leased access channel capacity for such carriage; and
- b. There are no technical impediments to such carriage; and
- c. The programming does not contain indecent or obscene material; and
- d. Such carriage will not otherwise adversely affect the operation, financial condition, or market development of the Cable System.

50. Many broadcasters transmit their programming using an over-the-air digital signal transmitted on a channel licensed by the FCC that can be viewed on a television screen in a standard definition format (“SD Format”)

51. Many broadcasters also broadcast their programming using a second over-the-air digital signal transmitted on another channel licensed by the FCC that can be viewed on a television screen in high definition format (“HD Format”) if the television set is compatible with HD Format.

52. Many broadcasters broadcast their programming in both HD Format and SD Format. Two signals are transmitted simultaneously; one for HD Format and another for SD Format. Carriage of that programming on a cable system likewise requires two separate channels; one dedicated to the SD Format and another separate channel dedicated to HD Format.

53. HD Format delivers a picture quality superior to SD Format.

54. Programming delivered in HD Format attracts more advertising revenue than programming delivered only in SD Format due to the perception of advertisers that viewers of HD Format can afford high definition television sets and have more disposable income than viewers who do not own high definition television sets.

55. There are at least thirteen (13) full power broadcast television stations licensed by the FCC to broadcast their signals in SD Format and HD Format in parts of Monroe County as described in the annexed Exhibit "B."

56. Upon information and belief, one or more of the broadcast television stations listed on Exhibit "B" are carried on the Cable System by "retransmission consent" pursuant to 47 U.S.C. §325 ("Retransmission Consent").

57. The terms and conditions of Retransmission Consent are negotiated on an arm's length basis between the owner of a broadcast television station and Comcast.

58. The owners of the broadcast television stations described in Exhibit "B" whose HD Format signals are carried on the Cable System pursuant to Retransmission Consent are referred to herein jointly and severally as the "HD Broadcasters."

59. The HD Format programming of the HD Broadcasters carried on the Cable System is referred to herein as the "HD Broadcast Programming."

60. Comcast receives and carries the HD Broadcast Programming on the Cable System in HD Format.

61. None of the HD Broadcast Programming is carried on the Cable System pursuant to a Leased Access Agreement.

62. Comcast also carries the television programming of each HD Broadcaster on the Cable System simultaneously on a separate channel in SD Format.

63. Thus the signals of each HD Broadcaster are carried on two (2) separate channels on the Cable System; one dedicated for distribution of the signal in SD Format and the other dedicated for HD Broadcast Programming.

64. Beginning in or about January 2013, Key TV and Comcast entered into a Leased Access Agreement (the "2013 Agreement").

65. Key TV entered into the 2013 Agreement without a waiver of its rights arising out of Comcast's breach of contract, unjust enrichment or other violations of law.

66. Key TV broadcasts Key TV Programming only in HD Format.

67. However, Comcast carries Key TV Programming on the Cable System only in SD Format.

68. Key TV requested Comcast to carry Key TV Programming on the Cable System in HD Format.

69. Comcast refuses to carry Key TV Programming on the Cable System in HD Format.

70. Comcast's refusal to carry Key TV Programming on the Cable System in HD Format impairs and impedes the delivery of Key TV Programming to the Cable System's subscribers (the "Subscribers").

71. Comcast refuses to provide Key TV the same carriage of Key TV Programming in HD Format that Comcast provides for the carriage of HD Broadcast Programming.

72. Upon information and belief, there is sufficient leased access channel capacity on the Comcast Cable System to carry Key TV Programming in HD Format.

73. Upon information and belief, there are no technical impediments to the carriage of Key TV Programming on the Comcast Cable System in HD Format.

74. Key TV Programming does not contain indecent or obscene material.

75. Upon information and belief, the carriage of Key TV Programming on the Comcast Cable System in HD Format will not adversely affect the operation, financial condition, or market development of the Comcast Cable System.

76. Upon information and belief, Comcast's refusal to carry Key TV Programming on the Comcast Cable System in HD Format was intended to promote Comcast's interests in a channel on the Cable System commonly known as Keys Information Station ("KIS").

77. Upon information and belief, KIS is owned and operated by Comcast.

78. KIS competes with Key TV in the solicitation of advertising from companies that want to sell their goods and services to tourists and residents in the Florida Keys.

79. KIS is distributed on the Comcast Cable System only in SD Format.

80. Upon information and belief, Comcast seeks to limit Key TV Programming to SD Format so that KIS will be more competitive with Key TV Programming in the solicitation of advertisers.

81. Comcast is in violation of 47 U.S.C. §532 by unreasonably refusing to carry Key TV Programming on the Comcast Cable System in HD Format.

82. Key TV has no adequate remedy at law for Comcast's unlawful refusal to carry Key TV Programming in HD Format.

WHEREFORE Key TV respectfully requests the entry of an order directing Comcast to carry Key TV Programming on the Cable System in HD Format together with the award of interest, costs, attorneys' fees and such other relief as the Court deems just and proper.

**COUNT SEVEN – VIOLATION OF 47 U.S.C. §532 BY REFUSING TO CARRY KEY TV PROGRAMMING ON THE HOSPITALITY TIER**

83. Key TV repeats and realleges ¶¶ 44 to 82.

84. Starting in or about 2012 and continuing to date, Comcast created and maintains a new service tier commonly known as "Hospitality TV" (the "Hospitality Tier").

85. The Hospitality Tier is distributed only in hotels and other lodging facilities in Monroe County.

86. The HD Broadcast Programming is carried on the Hospitality Tier.

87. Comcast also carries WJAN-CD and WEYW-LP on the Hospitality Tier.

88. WJAN-CD broadcasts programming commonly known as "American TeVe," which is locally originated Spanish language programming. WJAN-CD broadcasts only in SD Format.

89. WEYW-LP broadcasts programming commonly known as "RetroTV," which consists primarily of television series distributed by the national television networks in the 1950's through the 1970's. WEYW-LP broadcasts only in SD Format.

90. America TeVe and Retro TV are received and carried by Comcast on the Comcast Cable System only in SD Format. America TeVe and Retro TV are referred to jointly and severally herein as "SD Broadcast Programming."

91. WJAN-CD and WEYW-LP are referred to herein jointly and severally as the "SD Broadcasters."

92. The FCC licenses the SD Broadcasters to broadcast over-the-air in parts of Monroe County.

93. Upon information and belief, the SD Broadcast Programming is carried on the Hospitality Tier pursuant to either Retransmission Consent or a Leased Access Agreement.

94. The distribution of Key TV Programming in hotels and other lodging facilities in Monroe County is important to Key TV since a significant portion of its programming is directed to the tourists who stay in those facilities.

95. Key TV asked Comcast to carry Key TV Programming on the Hospitality Tier.

96. Comcast refuses to carry Key TV Programming on the Hospitality Tier.

97. Comcast refuses to provide Key TV the same carriage of Key TV Programming on the Hospitality Tier as Comcast provides for SD Broadcast Programming and HD Broadcast Programming.

98. Upon information and belief, there is sufficient channel capacity on the Comcast Cable System to carry Key TV Programming on the Hospitality Tier pursuant to a Leased Access Agreement.

99. Upon information and belief, there are no technical impediments to the

carriage of Key TV Programming on the Hospitality Tier.

100. Upon information and belief, the carriage of Key TV Programming on the Hospitality Tier will not adversely affect the operation, financial condition, or market development of the Cable System.

101. Comcast's refusal to carry Key TV Programming on the Hospitality Tier impairs and impedes the delivery of Key TV Programming to Subscribers.

102. Upon information and belief, Comcast excludes Key TV Programming from the Hospitality Tier so that the KIS will be more competitive with Key TV Programming in the solicitation of advertisers.

103. Comcast is in violation of 47 U.S.C. §532 by unreasonably refusing to carry Key TV Programming on the Hospitality Tier.

104. Key TV has no adequate remedy at law for Comcast's unlawful refusal to carry Key TV Programming on the Hospitality Tier.

WHEREFORE Key TV respectfully requests the entry of an order directing Comcast to carry Key TV Programming on the Hospitality Tier together with the award of interest, costs, attorneys' fees and such other relief as the Court deems just and proper.

**COUNT EIGHT – MONEY DAMAGES FOR DISCRIMINATION BASED ON CONTENT IN VIOLATION OF 47 U.S.C. §532**

105. Key TV repeats and ¶¶ 83 to 104.

106. Key TV has paid and continues to pay Comcast for the carriage of Key TV Programming on the Cable System pursuant to the 2008 Agreement and 2013 Agreement.

107. Upon information and belief, the SD Broadcasters do not pay Comcast for the carriage of SD Broadcast Programming on the Cable System.

108. Key TV and the SD Broadcasters are – except for the content of their respective programming -- similarly situated in all material respects for purposes of carriage of their respective programming on the Comcast Cable System because:

- a. They are licensed by the FCC to broadcast their respective programming to parts of Monroe County; and
- b. Comcast is not required to carry their signals over the Comcast Cable System pursuant to the “must carry” obligations of 47 U.S.C. §534; and
- c. Comcast may, at its election and with the broadcaster’s consent, carry their programming on the Cable System pursuant to either Retransmission Consent or a Leased Access Agreement; and
- d. The carriage of their respective signals on the Cable System extends their distribution to Subscribers throughout all of Monroe County; and
- e. They rely on advertising revenues to sustain their business; and
- f. Upon information and belief, they compete with each other and Comcast for advertising customers; and
- g. Upon information and belief, carriage of their programming on the Comcast Cable System enhances their revenues because it enhances the number of viewers of their programming; and
- h. Their programming is carried only in SD Format; and
- i. The method by which Comcast collects and distributes their respective signals is substantially identical with the exception that Key TV Programming is received in HD Format; and
- j. With the sole exception of the Hospitality Tier, their programming is made

available to all Subscribers on the same tiers.

109. The only material difference between Key TV and the SD Broadcasters for purposes of carriage of their respective programming on the Comcast Cable System is the content of their programming.

110. There is no legitimate reason for the discriminatory treatment of Key TV and the owners of the SD Broadcasters in the payment for carriage of their respective programming on the Comcast Cable System.

111. Comcast exercises illegal editorial control over Key TV Programming in violation of 47 U.S.C. §532(c)(2) by requiring Key TV to pay for the carriage of Key TV Programming on the Comcast Cable System and exempting the SD Broadcasters from paying for the carriage of SD Broadcast Programming on the Cable System.

112. Upon information and belief, the HD Broadcasters do not pay Comcast for the carriage of HD Broadcast Programming on the Comcast Cable System.

113. Key TV and the HD Broadcasters are – except for the content of their respective programming -- similarly situated in all material respects for purposes of carriage of their respective signals on the Comcast Cable System because:

- a. They are licensed by the FCC to broadcast their respective programming to parts of Monroe County; and
- b. Comcast may, at its election and with the broadcaster's consent, carry their programming on the Cable System pursuant to either Retransmission Consent or a Leased Access Agreement; and
- c. The carriage of their respective programming on the Comcast Cable System extends their distribution to Subscribers throughout all of Monroe

County; and

- d. They rely on advertising revenues to sustain their business; and
- e. Upon information and belief, they compete with each other and Comcast for advertising customers; and
- f. Upon information and belief, distribution of their signals on the Comcast Cable System enhances their revenues because it enhances the number of viewers of their programming; and
- g. Their signals are broadcast in HD Format; and
- h. The method by which Comcast collects and distributes their respective signals is substantially identical with the exception of distribution of Key TV Programming in SD Format; and
- i. With the sole exception of the Hospitality Tier, their programming is made available to all Subscribers on the same tiers.

114. The only material difference between Key TV and the HD Broadcasters for purposes of carriage of their respective programming on the Cable System is the content of their programming.

115. There is no legitimate reason for the discriminatory treatment of Key TV and the owners of the HD Broadcasters in the payment for carriage of their respective programming on the Comcast Cable System.

116. Comcast exercises illegal editorial control over Key TV Programming in violation of 47 U.S.C. §532(c)(2) by requiring Key TV to pay for the carriage of Key TV Programming on the Comcast Cable System and exempting the HD Broadcasters from paying for the carriage of HD Broadcast Programming on the Comcast Cable System.

117. Comcast has considered the content of Key TV Programming beyond the minimum extent necessary to set a reasonable price for the carriage of Key TV Programming by a Leased Access Agreement.

118. Upon information and belief, KIS is distributed on the Comcast Cable System without charge by Comcast.

119. Upon information and belief, Comcast seeks to impose on Key TV excessive costs for the carriage of Key TV Programming on the Cable System so that KIS will be more competitive with Key TV Programming in the solicitation of advertisers.

120. Comcast violates 47 U.S.C. §532 by charging Key TV an unreasonable rate for the carriage of Key TV Programming on the Comcast Cable System.

121. Key TV has been damaged by Comcast's violations in an amount to be determined but at least equal to all consideration received by Comcast for the carriage of Key TV Programming from the inception of carriage of SD Broadcast Programming or HD Broadcast Programming on the Comcast Cable System to date.

WHEREFORE Key TV respectfully requests the entry of judgment in its favor against Comcast in an amount to be determined but at least equal to all amounts paid by Key TV while the SD Broadcast Programming or HD Broadcast Programming was carried on the Comcast Cable System without charge together with the award of interest, costs, attorneys' fees and such other relief as the Court deems just and proper.

**COUNT NINE – ENJOINING DISCRIMINATION  
BASED ON CONTENT IN VIOLATION OF 47 U.S.C. §532**

122. Key TV repeats and realleges ¶¶105 to 120.

123. The fees paid by Key TV for the carriage of Key TV Programming

pursuant to the Leased Access Agreements constitute about 15% of the gross revenue of WCAY. These fees are a substantial burden on the delivery of Key TV Programming to the Subscribers and those who receive Key TV Programming by over-the-air broadcast.

124. Comcast's violation of 47 U.S.C. §532 impairs and impedes the delivery of Key TV Programming to Subscribers and those who receive Key TV Programming by over-the-air broadcast.

125. Key TV has no adequate remedy at law for the continued violation of 47 U.S.C. §532.

126. All of Comcast's violations of 47 U.S.C. §532 described in Counts Three through Eight (¶¶35 to 121) and in this Count Nine are a willful and intentional evasion of federal policies to:

- a. Promote a diversity of views on the Comcast Cable System, see 47 U.S.C. §512(a)(6); and
- b. Provide a fair, efficient, and equitable distribution of broadcast Services on the Comcast Cable System, see U.S.C. §521(a)(9).
- c. Ensure the continuation of local origination of programming on the Comcast Cable System, see 47 U.S.C. §521(a)(10); and
- d. Promote the continued availability of free television programming for viewers who are unable to afford other means of receiving programming, 47 U.S.C. §521(a)(12); and
- e. Assist local broadcasters in increasing their viewership, and thereby attract additional advertising revenues that otherwise might be earned by Comcast, 47 U.S.C. §521(a)(15); and

- f. Maintain the viability of free local television, 47 U.S.C. §521(a)(16); and
- g. Encourage the carriage of low-power television stations licensed to the communities served by those systems where the low-power station creates and broadcasts, as a substantial part of its programming day, local programming, 47 U.S.C. §521(a)(16); and
- h. Promote the availability to the public of a diversity of views and information through cable television and other video distribution media, 47 U.S.C. §521(b)(1); and
- i. Ensure that cable television operators do not have undue market power vis-a-vis video programmers and consumers. 47 U.S.C. §521(b)(5).

WHEREFORE Key TV respectfully requests the entry of an order enjoining Comcast from charging or collecting any amount from Key TV for the distribution of Key TV Programming on the Comcast Cable System so long as any SD Broadcaster or HD Broadcaster does not pay for carriage of its programming on the Comcast Cable System together with the award of interest, costs, attorneys' fees and such other relief as the Court deems just and proper.

#### **COUNT TEN – ENJOINING VIOLATIONS OF FDUTPA**

127. Key TV repeats and realleges the allegations in Counts Six, Seven and Nine (¶¶44 to 104 and 122 to 126).

128. Comcast's violations of 47 U.S.C. §532 are unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce in violation of F.S.A. §501.201, the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA").

129. Key TV has been injured by Comcast's violation of FDUTPA in the same manner it has been injured by Comcast's violations of 47 U.S.C. §532.

130. Upon information and belief, Comcast's actions were intended to promote Comcast's interests in the KIS.

131. The KIS competes with Key TV in soliciting advertisers.

132. Key TV has been injured by Comcast's violation of FDUTPA by the impairment of delivery of Key TV Programming to its intended audience for which Key TV has no adequate remedy at law.

WHEREFORE Key TV respectfully requests the entry of an injunction directing Comcast to carry Key TV Programming on the Cable System without charge in both SD Format and HD Format and display Key TV Programming in HD Format on the Hospitality Tier so long as Comcast carries any HD Broadcast Programming or SD Broadcast Programming in the same or similar manner together with the award of interest, costs, attorneys' fees and such other relief as the Court deems just and proper.

**COUNT ELEVEN – MONEY DAMAGES FOR VIOLATIONS OF FDUTPA**

133. Key TV repeats and realleges the allegations in ¶¶1 to 28, 128 and 129 and the allegations in Counts Three, Four, Five and Eight (excluding ¶¶76 to 80 and excluding ¶¶118 to 119).

134. Key TV has been damaged by Comcast's overcharges in an amount to be determined but at least \$283,000.

135. Key TV has been damaged by Comcast's failure to timely notify and remit in an amount to be determined but at least \$100,000.

136. Key TV has been damaged by paying rates for the distribution of Key TV

Programming on the Comcast Cable System that are artificially and unreasonably high when compared to the rates paid by the SD Broadcasters and HD Broadcasters in an amount to be determined but at least \$588,000 which is the amounts paid for carriage of Key TV Programming on the Cable System during the period SD Broadcast Programming or HD Programming has been carried on the Cable System without charge (at least \$871,000) less overcharges (at least \$283,000).

137. Upon information and belief, John Doe was a direct participant in the above described violations of FDUTPA by Comcast.

WHEREFORE Key TV respectfully requests the entry of judgment in its favor against Comcast and John Doe, jointly and severally in an amount to be determined but at least \$971,000 together with the award of interest, costs, attorneys' fees and such other relief as the Court deems just and proper.

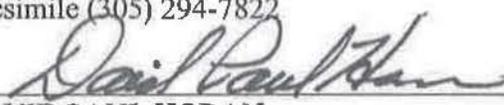
**PLAINTIFF DEMANDS TRIAL BY JURY**

Dated this 31<sup>st</sup> day of July, 2013.

Respectfully submitted,

HORAN, WALLACE & HIGGINS, LLP  
Attorneys for Plaintiff  
608 Whitehead Street  
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# **EXHIBIT A**

copy

CHANNEL LEASE AGREEMENT

This Agreement (the "Agreement") is entered into as of January 2<sup>nd</sup>, 2008 (the "Effective Date") by and between Comcast of California/Colorado/Florida/Oregon, Inc., formally TCI Cablevision of Georgia, Inc., a Georgia Corporation ("Lessor") and Beach TV Cable Co., Inc. dba Key TV ("Lessee").

RECITALS

A. Lessor owns and operates a cable television system (the "System") in Florida Keys (the "Community") pursuant to a franchise or permit (the "Franchise"); and

B. Lessee desires to lease channel time on the System pursuant to Section 612 of the Communications Act of 1934 as amended (the "Act") and subject to the terms and conditions of this Agreement.

In consideration of the mutual promises and covenants contained in this Agreement, Lessee and Lessor agree as follows:

AGREEMENT

1. Definitions. As used in this Agreement, the following terms have the following meanings:

(a) "Channel" means bandwidth sufficient to carry one video signal on the System as may be assigned to Lessee from time to time in accordance with the terms of this Agreement.

(b) "Service" means Lessee's service as specifically described in Exhibit A.

(c) "Subscriber" means an individual, firm, corporation or other legal entity that subscribes to and receives signals transmitted by Lessor over the System.

2. Use of Channel. Lessee agrees to be solely responsible for its programming and the Service and agrees to use the Channel in accordance with the following:

(a) Subject to Lessee's compliance with all of the terms and conditions of this Agreement, Lessor hereby agrees to distribute the Service on the Channel, whether in its current form or as compressed, modified, digitized, or altered, during the times set forth on Exhibit B.

(b) Subject to Lessee's compliance with all of the terms and conditions of this Agreement, Lessor agrees that the Service initially shall be distributed on the channel set forth on Exhibit B. Notwithstanding the foregoing or any other provision of this Agreement, and without any diminution of the obligations of Lessee hereunder, on 30 days' notice Lessor reserves the right to change or reassign (i) the Channel used by Lessee or (ii) the times during which Lessee has the right to use the Channel. Nothing contained herein or elsewhere shall be construed to grant to Lessee an exclusive or proprietary right to any particular channel, any particular time, or any rights

3. Term of Agreement. Unless sooner terminated pursuant to any provision of this Agreement, the term of this Agreement shall begin on the Effective Date and shall end on the ~~31<sup>st</sup> day of December, 2009~~. Lessee shall have no right to continued use of the Channel beyond the term of this Agreement. All representations, warranties, indemnifications and limitations of liabilities contained in this Agreement will survive termination of this Agreement, as well as any other obligations of the parties hereunder which, by their terms, would be expected to survive such termination or which relate to the period prior to termination.

4. Content of Service.

(a) The Service shall consist only of the programming specifically described in Exhibit A and no other use of the Channel is permitted. Lessee agrees to execute and deliver to Lessor, prior to the distribution by Lessor of the Service, a Certification of Leased Access Programmer in the form of Exhibit E.

(b) Pursuant to Section 612(h) of the Act, the Service may be subject to the review and approval of Lessor and Lessor's franchising authority.

(c) Lessee assumes complete responsibility for the content of the Service and Lessor undertakes no responsibility or duty for prescreening or monitoring the Service. Notwithstanding the foregoing, Lessor reserves the right to refuse to distribute, without notice to Lessee or liability of Lessor, any portion of the Service which Lessor believes, in its reasonable discretion, does not comply with this Agreement. Any such action from time to time by Lessor shall not relieve Lessee of its obligations hereunder.

(d) The System shall have the right to cablecast a message at the beginning and end of Lessee's programming in a form substantially similar to the following: "Comcast is required by federal law to make this programming available to its customers. Comcast is not affiliated with the programmer, and Comcast is not responsible in any way for the content of the programming you are viewing."

(e) Lessee acknowledges that it has received and read, and that it understands, Lessor's Indecency Policy, a copy of which is set forth in Exhibit D. Lessee represents that, prior to the transmission of any programming on the System, it will submit to Lessor a fully and accurately completed Certification by Leased Access Programmer (in the form of Exhibit E) with respect to such programming. Unless Lessee has first obtained Lessor's prior specific consent, and has reached agreement with Lessor as to the terms and conditions pursuant to which such programming shall be distributed by Lessor, no programming provided by Lessee shall contain indecency or inappropriate nudity. Not in limitation of, but in addition to the foregoing, Lessor reserves the right, unless it has reached agreement with Lessee as set forth above, to refuse to distribute, without notice to Lessee or liability of Lessor, any portion of the Service which Lessor believes, in its reasonable discretion, contains indecency or inappropriate nudity. In addition, Lessor reserves the right to refuse to distribute, without notice to Lessee or liability of Lessor, any portion of the Service which Lessor believes, in its reasonable discretion, contains obscenity. Any such action from time to time by Lessor shall not relieve Lessee of its obligations hereunder.

other facilities contain expensive and sophisticated equipment, and Lessee agrees to comply with all reasonable security procedures required by Lessor.

(c) Neither Lessee's use of the Channel nor its use of any equipment in connection therewith shall impair or interfere with the quality of signals transmitted by Lessor on the System or any service offered thereon by Lessor or any of its programmers, other lessees or licensees.

(d) If Lessee's use of the Channel involves attachment to the System of Lessee-provided equipment of any kind, the following provisions shall apply:

(i) The use of Lessee-provided equipment shall not require change in, or alteration of, the equipment or other facilities of Lessor.

(ii) Before connection of any Lessee-provided equipment, Lessee shall demonstrate to the satisfaction of Lessor that the connection of such equipment will not cause Lessor to be unable to meet its technical requirements or its obligations under the rules and regulations of the FCC or any other regulatory body and will not impair or affect the quality of the signals transmitted by Lessor on the System or any service thereon offered by Lessor or any of its programmers, other lessees or licensees.

(iii) Lessor reserves the right at all times to refuse to allow Lessee to provide the Service or attach any Lessee-provided equipment to the System or to require the removal or replacement of existing equipment if, in the sole judgment of Lessor, the equipment being used or proposed to be used in connection with the Service or its personnel involved are performing or would perform in a manner which adversely affects or would adversely affect the System, the signals transmitted by Lessor thereon, the services offered by Lessor or any of its programmers, other lessees or licensees or Lessor's ability to comply with the rules and regulations of the FCC or any other regulatory body. Notwithstanding the foregoing, Lessor will reasonably consult with Lessee to identify alternative equipment Lessee may use to avoid the adverse affects on the System.

(e) If, in the sole judgment of Lessor, it is necessary in order to prevent impairment of or interference with the System, the signals Lessor transmits or the service it provides or to comply with the Franchise or the rules and regulations of the FCC or any other regulatory body, Lessor may obtain, install or maintain, at Lessee's expense, any equipment necessary to prevent such adverse affects.

(f) Lessee may not perform any technical functions or perform any other work affecting or attached to the System without first obtaining Lessor's written approval.

(g) Nothing contained herein shall be construed as Lessor's consent to the attachment of any facilities or equipment to its tower or other property or facilities. Lessee shall not attach any equipment or facilities to Lessor's tower or other property or facilities without having first entered into a written separate agreement governing such attachment and complying with the terms thereof.

(h) Lessee's programming shall meet reasonable production standards which will not be any higher than those applied to public, educational and government access channels.

9. Termination

(a) This Agreement may be terminated immediately upon the occurrence of any of the following:

(i) By either party in the event of any breach by the other of any provision of this Agreement (including without limitation any warranty or representation);

(ii) By either party if termination is required by a final order of any court or governmental body or agency of competent jurisdiction;

(iii) By Lessor if Lessee fails to make any channel lease payment when due, which failure is not cured by Lessee within five business days after notice from Lessor of such failure.

(iv) By Lessor if the obligations of Lessor to lease channel space pursuant to Section 612 of the Act are repealed or are adjudged unconstitutional or otherwise invalid or unenforceable in a final, unstayed decision of any court of competent jurisdiction;

(v) By Lessor if Lessor ceases to provide cable television service to the System or becomes precluded from serving the subscribers of the System because of the termination, revocation or expiration of any franchise, license or other law, rule, regulation, authorization, contract or other document necessary for the operation of the System;

(vi) By Lessor if Lessee's use of the Channel would violate or would cause Lessor to violate any obligation of Lessor imposed by any contract or governmental authority, including without limitation, municipal, state, federal or administrative;

(vii) By either party if the use of the Channel pursuant to this Agreement is precluded by lawful action of any state, federal or municipal authority, or if, in the reasonable judgment of Lessor, the renewal of its Franchise or license would or could be endangered by the continuation or implementation of this Agreement;

(viii) By Lessor if Lessee should file, or should have filed against it, a petition in bankruptcy (voluntary or involuntary), or become insolvent, reorganized or make any assignment for the benefit of creditors, or make any arrangement or be subject to any other proceeding under the bankruptcy laws of the United States or the insolvency laws of any state; and

(ix) By Lessee upon thirty days' prior written notice to Lessor.

(b) Upon any termination of this Agreement, all sums then due under this Agreement shall become payable immediately, all obligations of Lessor pursuant to this Agreement shall cease and Lessee promptly shall remove all of its equipment from the facilities of the System or of Lessor. If Lessee fails to remove its equipment, Lessor shall have the right to remove and to store, both at Lessee's expense, all such equipment located on Lessor's premises. If Lessee does not claim any such equipment and pay Lessor's costs of removal and storage within 30 days after notice to Lessee, Lessor may sell such equipment at public or private sale, and may retain any costs of removal.

service marks, patents or other property rights or any other rights whatsoever (e) any claims which may be made by any governmental body or agency or any person or entity (including, but not limited to, Lessee or Lessee's agents or employees) in connection with Lessee's programming or use of any of the Channel, (f) any injury to any person (including without limitation Lessor's or Lessee's agents, employees, or invitees) or damage to Lessor's equipment or other assets, resulting from Lessee's use of the Channel and (g) the content of Lessee's programming and/or Lessor's use and delivery thereof.

13. Taxes and Charges. Any and all federal, state and local taxes and other governmental fees or charges of any nature whatsoever payable with respect to distribution of the Service or use of the Channel by Lessee pursuant to this Agreement, other than income taxes imposed on Lessor for the rent paid under this Agreement, shall be the responsibility of Lessee and shall not be deductible from any amounts payable by Lessee to Lessor. Lessee agrees to pay to Lessor, upon presentation of an invoice to Lessee, any excise, use, sales, copyright, royalty, privilege or other fees or taxes now or hereafter imposed or levied by any association, government or governmental agency upon Lessor by virtue of Lessee's use of the Channel.

14. Use of Lessor's Name.

(a) Lessee is prohibited from using Lessor's name, service marks, logos, or trade names in Lessee's advertising or in any other manner or for any purpose without the prior written consent of Lessor, which consent may be withheld or delayed in Lessor's sole and absolute discretion. Notwithstanding the foregoing, Lessee may use Lessor's name (but not Lessor's logo) for the limited purpose of identifying where Lessee's programming may be viewed.

(b) Lessee shall take all necessary measures to ensure that there is no confusion between the Service and the services offered by Lessor and no confusion concerning the absence of any legal relationship other than this Agreement. Lessee shall not take any action or make any statement, orally or in writing, as part of the programming or otherwise, that could create the impression that Lessor or its affiliates endorse the views expressed in the Service or are involved in the creation or production of the Service or are in any manner affiliated with or responsible for Lessee or the Service. Upon request by Lessor, any advertising or promotional material identifying the Service which Lessee proposes to use shall be submitted to Lessor for its prior approval at least 20 days prior to the date such material shall be used. If Lessor fails to notify Lessee of any objection to such material within such 20 day-period, then such material may be used until such time as Lessor objects to the use of such material. Lessor retains the right to insert a message stating that Lessor is not responsible for the Service. Lessee's advertising and promotion materials will set forth a separate telephone number, different from that of Lessor, for parties to call who desire information about the Service.

of the parties and their respective heirs, successors, representatives and assigns. Notwithstanding the foregoing, except as provided in Section 8, Lessee shall not relinquish, sublease, assign, sell or otherwise transfer its rights and obligations under this Agreement to any other person or entity. Lessor may sell, assign or transfer this Agreement to any person or entity without the consent of Lessee.

(e) Severability. If any part of any provision of this Agreement is invalid or unenforceable under applicable law, the provision shall be ineffective only to the extent of such invalidity or unenforceability without in any way affecting the remaining parts of the provision or this Agreement.

(f) Confidentiality. All information regarding Lessor's operations shall be deemed confidential and proprietary. When gained from any source, all such information shall be held by Lessee in the strictest confidence and not revealed to any third party.

(g) No Reliance. Lessee acknowledges that (i) nothing contained in this Agreement or otherwise shall obligate the parties to enter into any further business relationship or agreement, and (ii) Lessee is not relying on Lessor in operating and/or developing Lessee's business.

(h) Force Majeure. In addition to Lessor's other rights of termination hereunder, Lessor's performance hereunder shall be excused by the occurrence of any of the following events or conditions, for the entire periods during which such events or conditions continue: prevention, delay or stoppage due to strikes, lockouts, picketing, boycotts, inability to obtain labor or materials or reasonable substitutes therefor, enemy or hostile governmental action, civil commotion, fire, acts of God, flood, earthquake, tornado, hurricane, weather, mechanical or equipment failure, transportation lacks, energy shortages, governmental restrictions, regulations, or controls, or other causes or occurrences beyond Lessor's reasonable ability to control. The occurrence of any event described above shall not cause the term of this Agreement to be extended or obligate Lessor to refund any amount to Lessee.

(i) Paragraph Headings. Paragraph headings are for ease and reference only and are not to be utilized to expand, limit or otherwise modify the terms of this Agreement.

(j) Waiver. The failure of either party to enforce at any time, or for any period of time, any of the provisions hereof with respect to any breach or obligation of the other party shall not be construed as a waiver of such provisions or any other provisions, nor shall such failure otherwise restrict the right of such party to enforce each and every lawful provision of this Agreement.

EXHIBIT A

Description of the Service

24 Hour Tourist Information Channel

Method of Delivery of Programming

1. Describe method of delivery of programming, *i.e.*, tape drop off, tape delivery, fiber, satellite:

Broadcast  
\_\_\_\_\_  
\_\_\_\_\_

2. Will Lessee conduct any program production on Lessor's premises? Yes  No

If yes, describe nature of production activities:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

EXHIBIT C

Rates and Payment

Rate For Use of Channel  
(24/Florida Keys)

LN	NET & CHL	START	STOP	START	STOP	AUTHORIZED							MONTHLY	# OF	TOTAL
		DATE	DATE	TIME	TIME	M	T	W	T	F	S	S	COST	MONTHS	COST
1	Florida Keys	1/2/2008	12/31/2008	0:00	24:00:00	X	X	X	X	X	X	X	\$14,564.00	12	\$174,768.00
2	Florida Keys	1/1/2009	12/31/2009	0:00	24:00:00	X	X	X	X	X	X	X	\$14,564.00	12	\$174,768.00
3															\$0.00
4															\$0.00
5															\$0.00
		PAGE	1	OF	1										\$349,536.00

Technical Support  
Lessee will provide

Technical Support  
Technical or  
Engineering

Technical Support  
Equipment Check  
access program

Note: Except for  
be required to provide

*Please copy this package  
for our files and mail to  
Bill Underwood @  
Courcast / Key West  
mailed  
8/1/13*

3  
hours.

and  
rent.

shall

**EXHIBIT E**

**Certification of Leased Access Programmer**

In connection with the Channel Lease Agreement (the "Agreement") dated \_\_\_\_\_, 20\_\_\_\_ entered into by **Comcast** ("Lessor") and **Beach TV Cable Co., Inc. dba Key TV** ("Lessee"), Lessee certifies the following:

1. **Indecency and Obscenity.** Lessee acknowledges that it has received from Lessor and understands Lessor's Leased Access Indecency Policy (the "Indecency Policy") and that all programming submitted by Lessee pursuant to the Agreement (the "Programming") complies in all aspects with the Indecency Policy. Lessee certifies that the Programming is in the following category:

**Programming is not obscene**

**Programming is not indecent**

**Programming is indecent** but Lessee has accurately and fully completed all sections of this certification, Lessee has discussed the indecent content of the Programming with Lessor, and Lessor and Lessee have agreed in writing on the specific terms and conditions pursuant to which the Programming will be cablecast on the System.

If Lessor does not certify that the Programming is not obscene, the Service will not be cablecast on the System and the Agreement immediately shall terminate. If Lessee does not certify that the Programming is not indecent, Lessor will assume that the Programming is indecent and will only cablecast the Programming if Lessor and Lessee agree in writing as to the specific terms and conditions pursuant to which the Programming will be cablecast.

2. **Indecent Programming Certifications.** If the Programming is indecent, Lessee certifies the following:

A. The Programming does not contain any live programming or any programming depicting rape, torture, abuse towards women, sexual violence, necrophilia, male on male scenes, scenes depicting drug usage, anal penetration, male ejaculation, sadism, sado masochism, bestiality, bondage, incest or programming involving or suggesting sexual activity with, between or among minors. No direct on-air marketing or sale of products or services will advertise, promote, sell or contain any (i) illegal products or services; (ii) products or items which invade the body or (iii) sexual appliances or items used for simulated sexual intercourse.

B. With respect to the Programming, (A) Lessee is in compliance in all respects with the Child Protection Restoration and Penalties Enhancement Act of 1990, including without limitation all record keeping requirements associated with such law and (B) even if Lessee is not a

**EXHIBIT B**

**EXHIBIT B – FULL POWER BROADCASTERS LICENSED  
TO BROADCAST IN PARTS OF MONROE COUNTY**

<u>Call Sign</u>	<u>Affiliation</u>
WPLG-TV	ABC
WTVJ-TV	NBC
WFOR-TV	CBS
WSVN-TV	Fox
WSFL-TV	CW
WBFS-TV	My Network TV
WPXM-TV	ION
WPBT-TV	PBS
WSBS-TV	MegaTV
WSCV-TV	Telemundo
WLTN-TV	Univision
WAMI-TV	Telefutura
WGEN-TV	MundoFox

----- Forwarded message -----

From: **Mary Sparacio** <marysparacio@me.com>

Date: Wed, Feb 12, 2014 at 9:17 AM

Subject: WEYW - Must Carry

To: Steven Broecker <steven.broecker@fcc.gov>

Cc: Rick Bellizzi <rick.bellizzi@gmail.com>

Dear Mr. Broecker,

Low Power Television can be a powerful communication tool to inform and unite diverse neighborhoods through understanding and to help local organizations reach the public. Please grant WEYW must carry. We need to survive to continue to impact our string of rural communities on the Florida Keys, Monroe County.

---

Rick Bellizzi and I have a dream to inform and bring together the diverse and scattered communities of the Florida Keys in what was the original intent for establishing Low Power Television in America. This is very personal for me, and a subject about which I am very passionate. I have associated my station and permits with Rick Bellizzi.

**WTVK 31 - Key West, Stock Island**

**Layton, FL - A construction permit (W20DC):** until February 24, 2014. I am requesting a small extension today through my lawyer Lee Peltzman.

**Key West, Downtown, (La Concha) (W15DL-D) – A construction permit**

**Marathon, FL (W18DU-D): – A construction permit.**

Combined with Rick Bellizzi's stations we hope to reach throughout the Florida Keys. WEYW is based in Monroe County the other Must Carry's are not.

The Florida Keys and Monroe County are a series of remote rural communities spread out over more than 1,700 islands and thousands of square miles and over 50 bridges. The land area however is only 135 square miles and has a population concentration of around 560 per square mile and a resident population of around 70,000. Whilst Key West has around 30% of the population the rest is spread through the many villages and small clusters of population through the mainly unincorporated islands – many below 100 residents. Only the most densely populated areas have access to cable, which translates to less than 50% of the year-round population.

We must be on cable to sell Ads but the high cost of carriage is impossible to support.

Comcast has, rather than encourage and support the local communities, does everything it can to wipe out any small competition from Local TV. These local shows are what many folk would like to see, people in their own community.

WEYW is consistently in the communities with local information and events. We at WTVK, Key West covered Local High School Football, Gay Pride, The Red Show Drop on New Year's Eve, the Drag Races, the Veteran's Day parade Artists and Musicians, School children playing ball, The education at the local botanical gardens and Seniors events are all part of the "Good News" we desire to hear about in our corner of America on the Air and on Cable.

Following the devastation of Hurricane Katrina, WTVK was the only TV Station on over the Air or on Cable for several weeks. We had electric power in the Keys but were cut off from the North who had no power and the satellite dishes far away in Miramar, that would carry all other stations, blew down and took weeks to rebuild.

We set up the Camera and two chairs in the parking lot outside our transmitter tower and went Live for 5 hours. Officials came to us to reach the people. We could send a signal 5 miles away to the Comcast Head End and go on with emergency information. FEMA was on several times a day as was the Red Cross. We had so much information and interviews

to relay to all the people of the lower Florida Keys. The first two days we broadcast for many, many hours telling people where to go for help and how to reach the Army corps of engineers to put on a Blue Roof. The City departments talked about many things people needed to hear and when they would come by your neighborhood to take away their every appliance that the storm surge had ruined. Our black stringer reporter reassured the black community that FEMA was okay to approach and we translated what information we could into Spanish. Then we played the happiest "Classic" movies to get peoples minds off their troubles until the next day when we started again with more info. We were on for two hours a night after that until the power came back on in Miami and the Newspaper could print again. We were Low Power TV in action.

Comcast did nothing. The other "Must Carry" stations did nothing they were all based 150 miles and more away in another County.

WEYW and WTVK serve Monroe County.

The Florida Keys is a diverse place. There are wealthy people but also a lot of poor folk that need TV over-the-air or on basic cable.

The advertising dollars in the Florida Keys can't support the high rates Comcast Cable charges for Low Power TV to be carried. Yet we have to be also on cable to get any advertisers to survive.

The Armed Forces community is isolated, we've covered everything from children's events to the Veterans Day parade, to Wounded Warriors. On November 11th we always have a recitation of " In Flanders Fields" and maintain a minute of silence for Armistice Day. Only small towns care about these values anymore. We serve our community.

Only Low Power Television like WEYW cares to cover the Good News, local events and can tell neighbors that there are neighbors that need help.

We are in need of a must carry license to take the money pressure off our dream of Community Television. The Florida Keys has not recovered as well as other parts of the Country. Unemployment is over 25% and property vales are less than half of what they were in 2010. I lost my house. Rick struggles to make community TV work.

WTVK could no longer afford carriage and now WEYW struggles to pay to be on cable. Comcast admitted that they had overcharged WTVK by over \$120,000 and told us to sue them for it – laughed at us. Their behavior has been unethical and probably illegal but we cannot afford to take them to court, as they will just keep delaying until we run out of money. They are right, we have. They did it to the other local stations they drove out of business by this and other dirty tricks.

My Construction Permit for Layton Florida will expire and we struggle to build it before the end of the month.

Please help us. We need Must Carry on WEYW.

Sincerely Yours,

*Mary Sparacio*