

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File No. EB-07-RK-005
Variety Wholesalers, Inc.	)	
	)	Acct. No. 0832460004
Henderson, NC	)	
	)	FRN 0005489679

**ORDER**

**Adopted:** June 10, 2008

**Released:** June 12, 2008

By the Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and Variety Wholesalers, Inc. (“Variety”). The Consent Decree terminates an investigation by the Bureau against Variety for possible violations of Section 15.117(k) of the Commission’s Rules regarding the labeling of television receiving equipment that contains an analog broadcast television tuner but does not contain a digital broadcast television tuner.

2. The Bureau and Variety have negotiated the terms of the Consent Decree that resolve this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Variety possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,<sup>1</sup> and Sections 0.111 and 0.311 of the Commission’s Rules,<sup>2</sup> the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that Variety Wholesalers, Inc. shall make its voluntary contribution to the United States Treasury, as specified in the Consent Decree, by mailing a check or similar instrument payable to the order of the Federal Communications Commission, to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail

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<sup>1</sup> 47 U.S.C. § 154(i).

<sup>2</sup> 47 C.F.R. §§ 0.111, 0.311.

may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Variety shall also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

8. **IT IS FURTHER ORDERED** that Variety Wholesalers, Inc. will file reports with the Commission ninety days after the Effective Date and on July 9, 2009. Each report shall include a compliance certificate from an officer, as an agent of Variety, stating that the officer has personal knowledge that Variety has established operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the officer’s compliance certification. All reports shall be submitted to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554 and by e-mail at Kathy.Berthot@fcc.gov.

9. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Variety Wholesalers, Inc., G. Templeton Blackburn, II, Sr. Vice President and General Counsel, 218 S. Garnett Street, Post Office Drawer 947, Henderson, NC 27536.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief, Enforcement Bureau

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**CONSENT DECREE**

The Enforcement Bureau (“Bureau”) and Variety Wholesalers, Inc. (“Variety”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into whether Variety violated the labeling requirements of television receiving equipment containing an analog broadcast television tuner but without a digital broadcast television tuner, as set forth in Section 15.117(k) of the Commission’s Rules (“Rules”).

**I. DEFINITIONS**

1. For the purposes of this Consent Decree, the following definitions shall apply:
  - (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
  - (b) “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
  - (c) “Analog-only television receiving equipment” means television receiving equipment that contains an analog broadcast television tuner but does not contain a digital broadcast television (“DTV”) tuner.
  - (d) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
  - (e) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
  - (f) “Citations” means the citations issued by Bureau or the Commission between May 29, 2007, and the Effective Date alleging violations by Variety of Section 15.117(k) of the Commission’s Rules.
  - (g) “Effective Date” means the date on which the Commission releases the Adopting Order.
  - (h) “Investigation” means the investigation initiated by the Bureau regarding Variety’s compliance through the Effective Date with Section 15.117(k) of the Commission’s Rules regarding the labeling of television receiving equipment that contains an analog

broadcast television tuner but does not contain a digital broadcast television (“DTV”) tuner.<sup>1</sup>

- (i) “Parties” means Variety and the Commission.
- (j) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (k) “Variety” means Variety Wholesalers, Inc. and its predecessors-in-interest and successors-in-interest.

## II. BACKGROUND

2. To ensure that consumers do not inadvertently buy analog-only television receiving equipment without understanding that such devices will not be capable of receiving over-the-air television reception of digital signals after analog broadcasting ends unless connected to a digital-to-analog converter or a digital subscription service, the Commission adopted rules requiring anyone that sells, offers for sale, or rents television receiving equipment that does not contain a DTV tuner to display a Consumer Alert at the point of sale.<sup>2</sup> This requirement also applies to the sale or rent of analog-only television receiving equipment via direct mail, catalog, or electronic means (*e.g.*, the Internet). These requirements are contained in Section 15.117(k) of the Rules, which became effective on May 25, 2007.<sup>3</sup>

3. Section 15.117(k)(3) of the Rules requires that the Consumer Alert contain the following language:

### **CONSUMER ALERT**

This television receiver has only an analog broadcast tuner and will require a converter box after February 17, 2009, to receive over-the-air broadcasts with an antenna because of the Nation’s transition to digital broadcasting. Analog-only TVs should continue to work as before with cable and satellite TV services, gaming consoles, VCRs, DVD players, and similar products. For more information, call the Federal Communications Commission at 1-888-225-5322 (TTY: 1-888-835-5322) or visit the Commission’s digital television website at: [www.dtv.gov](http://www.dtv.gov).

The Consumer Alert must be in a size of type large enough to be clear, conspicuous and readily legible, consistent with the dimensions of the equipment and the label. The alert either must be printed on a transparent material and affixed to the screen, in a manner that is removable by the consumer and does not obscure the picture when displayed for sale, or displayed separately immediately adjacent to each television receiver offered for sale and clearly associated with the analog-only model to which it pertains. In the case of other analog-only video devices that do not include a display (*e.g.*, VCRs, DVD players), the Consumer Alert must be in a prominent location on the device, such as on the top or front, or

<sup>1</sup> 47 C.F.R. 15.117(k).

<sup>2</sup> *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion To Digital Television*, Second Report and Order, 22 FCC Rcd 8776 (2007) (“*Second DTV Periodic Report and Order*”).

<sup>3</sup> *Second Periodic Review in the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, 72 Fed. Reg. 28894-01 (May 23, 2007).

displayed separately immediately adjacent to and clearly associated with the analog-only model to which it pertains. To the extent that any persons display or offer for sale or rent via direct mail, catalog, or electronic means analog-only television receiving equipment, they must prominently display the Consumer Alert as part of all advertisements or descriptions of such television receiving equipment, in clear and conspicuous print, and in close proximity to any images or descriptions of such equipment.

4. After the rule became effective, the Bureau began inspecting stores throughout the country, as well as popular retailer websites, and observed many models of analog-only television receiving equipment on display without the required Consumer Alert labels. Beginning on or about May 29, 2007, the Bureau conducted inspections at multiple Variety stores. Based on those inspections, and relying on publicly available information, the Bureau issued Citations to Variety for alleged violations of Section 15.117(k) at its stores. After affording Variety a reasonable opportunity to respond to the first Citation, agents and investigators from the Enforcement Bureau inspected Variety stores in various states and observed, in stores, what appeared to them to be television receiving equipment with analog-only tuners on display apparently without the required Consumer Alert labels.

### III. TERMS OF AGREEMENT

5. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

6. **Jurisdiction.** Variety agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

7. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the Bureau releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

8. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of said Investigation, Variety agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date of the Consent Decree, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Variety concerning the matters that were the subject of the Investigation. The Bureau also agrees that it will not use the facts developed in this investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Variety with respect to Variety's basic qualifications, including its character qualifications, to hold Commission authorizations.

9. **Consumer Education Regarding the DTV Transition:** Variety agrees to implement the following measures to educate the public about the upcoming digital transition:

- A. Within sixty (60) days of the Effective Date, Variety will place an adhesive label on every box containing an analog-only television containing the FCC approved

text of the Consumer Alert together with a statement that information on the digital transition is available at [www.dtv.gov](http://www.dtv.gov) and [www.dtv2009.gov](http://www.dtv2009.gov).

- B. In fifty (50) percent of all print advertising featuring televisions between the Effective Date and February 17, 2009, Variety will include a reference to the February 17, 2009 DTV transition end date and refer to the FCC's DTV transition website ([www.dtv.gov](http://www.dtv.gov)).
- C. For Rose's stores, a tradename of stores operated by Variety, within sixty (60) days of either the Effective Date or the date it receives a sample video from the Bureau, whichever is later, Variety will display a video announcement on the DTV transition and the National Telecommunications and Infrastructure Administration's Digital-to-Analog Converter Box Coupon Program on a continuous loop in stores with such video capabilities. [The Bureau shall provide 100 copies of the video to Variety for its stores.]
- D. Within sixty (60) days of either the Effective Date or the date it receives an electronic copy of a sample tipsheet on the DTV transition from the Bureau, whichever is later, Variety shall print and stock such tipsheets adjacent to television displays in stores. In the event that the Commission or its designee notifies Variety that the tipsheet has been updated, Variety will use the revised tipsheet within 30 days of receipt

10. **Termination of Sales of Analog-Only Televisions.** Variety has not placed any orders for analog only televisions after February 5, 2008. Variety's stock of unsold analog-only televisions as of the Effective Date is less than 5,000 units and consists solely of refurbished televisions. Variety shall terminate all domestic retail sales of analog-only televisions no later than December 31, 2008. Beginning August 29, 2008, and on the last business day of each successive month, Variety shall notify Diane Law-Hsu, Regional Counsel, South Central Region, Enforcement Bureau, Federal Communications Commission, at [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov) whether Variety continues to sell analog-only televisions. Beginning September 1, 2008, and continuing on the first business day of each successive month, Variety shall make a voluntary contribution to the United States Treasury in the amount of \$1,500 until Variety no longer sells analog-only televisions. Payment shall be made as described in Paragraph 13. Variety's audit staff will confirm compliance with this paragraph.

11. **Compliance Report.** Variety will file a compliance report with the Commission within 90 days of the Effective Date and on February 17, 2009. The compliance report shall include a compliance certificate from an officer, as an agent of Variety, stating that the officer has personal knowledge that Variety has established operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the officer's compliance certification. The compliance reports shall be submitted to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554 and by e-mail at [Kathy.Berthot@fcc.gov](mailto:Kathy.Berthot@fcc.gov).

12. **Termination Date.** Unless stated otherwise, the requirements of this Consent Decree will expire February 17, 2009.

13. **Voluntary Contribution.** Variety agrees that it will make a voluntary contribution to the United States Treasury in the amount of thirty eight thousand dollars (\$38,000). This payment will be made within thirty (30) days after the Effective Date of the Adopting Order. Each payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications



Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payments by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Variety shall also send electronic notification on the date said payment is made to Diane Law-Hsu at SCR-Response@fcc.gov.

14. **Waivers.** Variety waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues the Adopting Order without change, addition, modification, or deletion. Variety shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Variety nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Variety shall waive any statutory right to a trial *de novo*. Variety hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

15. **Severability.** The Parties agree that if any of the provisions of the Adopting Order or the Consent Decree shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Adopting Order or Consent Decree, but rather the entire Adopting Order or Consent Decree shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

16. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Variety does not expressly consent) that provision will be superseded by such Commission rule or Order.

17. **Successors and Assigns.** Variety agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

18. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission’s Rules and Orders.

19. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

20. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

21. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

22. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

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Kris Anne Monteith  
Chief  
Enforcement Bureau

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Peter J. Hayes  
Chief Operating Officer  
Variety Wholesalers, Inc.

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Date

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Date