

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

In the Matter of)	
)	
Bailey Cable TV, Inc.)	MB Docket No. 12-35
)	CSR No. 8585-C
)	NAL/Acct. No: MB-201241410024
)	FRN: 001140934

FORFEITURE ORDER

Adopted: July 3, 2012

Released: July 3, 2012

By the Chief, Media Bureau:

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of fifteen thousand dollars (\$15,000) to Bailey Cable TV, Inc. (“Bailey”), for willfully and repeatedly violating Section 325 of the Communications Act of 1934, as amended (the “Act”), and Section 76.64 of the Commission’s rules.¹ The noted violations involve Bailey’s retransmission of the signal of broadcast station WVLA-TV, Baton Rouge, Louisiana, without the express authority of the originating station.²

2. On March 16, 2012, the Media Bureau (“Bureau”) issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of \$15,000 to Bailey for the unauthorized retransmission of WVLA-TV.³ In response, Bailey does “not challenge the general factual accuracy of [its] actions as set forth in the [NAL] issued by the Media Bureau.”⁴ Moreover, as described below, Bailey has not provided any information that would justify reducing the forfeiture amount.⁵ Accordingly, we issue a forfeiture in the amount of \$15,000 as set forth in the NAL.⁶

3. Bailey objects to the Bureau “splitting a single violation of the [Act] and a Commission Rule, which together affected two television stations in the market where Bailey operates, into two separate

¹ 47 U.S.C. § 325; 47 C.F.R. § 76.64.

² Concurrently with this Forfeiture Order, we are issuing a Forfeiture Order pertaining to a similar violation involving Bailey’s unauthorized retransmission of the signal of broadcasting station WGMB-TV, Baton Rouge, Louisiana.

³ *Bailey Cable TV, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Red 2625 (MB, 2012) (“*Bailey WVLA NAL*”).

⁴ Letter from Lewis H. Goldman, Attorney for Bailey Cable TV, Inc., to Marlene H. Dortch, Secretary, FCC, at 1 (May 8, 2010) (“Bailey Letter”).

⁵ *See* 47 C.F.R. § 1.80(b)(6) (“In determining the amount of the forfeiture penalty, the Commission or its designee will take into account the nature, circumstances, extent and gravity of the violations and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”).

⁶ We note that instead of submitting information that might justify reducing the forfeiture, Bailey asserts “that senior Bureau management bears some curious animosity towards Mr. Bailey.” Bailey Letter at 1. There is no factual basis for this unsupported assertion. Moreover, we note that the Bureau, throughout this proceeding, has taken Bailey’s unique circumstances into consideration, as demonstrated by Bureau staff: (1) considering the single answer Bailey filed as a response to both complaints; (2) ensuring that confidential information in the Bailey answer was redacted before the pleading was made publicly available on the Commission’s Electronic Comment Filing System (“ECFS”); (3) taking into consideration Bailey’s financial information in issuing the NAL; and (4) affording counsel two extensions of time to file its response to the NAL.

proceedings for the sole purpose of seeking to ‘bleed’ Bailey four [sic] a double penalty.”⁷ This argument is without merit. In issuing separate NALs, the Bureau did not “split a single violation” into two. To the contrary, Bailey’s retransmissions of the signals of two different broadcast stations without the relevant stations’ consents constitute separate and distinct violations of the Act and the Commission’s rules.⁸ Each violation potentially is subject to a forfeiture penalty.⁹ Indeed, Bailey’s retransmission consent violations were also the subject of two separate complaints filed by two different broadcast licensees.¹⁰

4. Bailey’s reliance on the *Silv NAL*¹¹ to support its “single violation” argument or its claim that the Bureau should have addressed the violations raised in the two complaints against Bailey through one NAL is misplaced.¹² In fact, *Silv* supports the Bureau’s issuance of two separate forfeiture penalties against Bailey. In *Silv*, although the 25 complaints on which the NAL was based presented similar facts, each involving an unauthorized change of the consumer’s telecommunications carrier, the Commission treated each violation as a separate violation. To determine the forfeiture amount, the Commission multiplied the base forfeiture amount by the number of consumers (25) that had filed complaints with the Commission.¹³ Thus, the assessment of separate forfeiture penalties against Bailey for its wrongful retransmission of each of the two broadcast stations is entirely consistent with the Commission’s decision in *Silv*. Further, there are numerous examples where the Bureau has issued separate NALs when separate underlying complaints presented similar facts.¹⁴

5. In addition, Bailey fails to provide any information that would justify reducing the forfeiture, such as history of compliance or inability to pay. Section 1.80 of our rules sets forth factors that the Commission or its designee will take into account in determining the amount of a forfeiture penalty, including “the nature, circumstances, extent and gravity of the violations and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹⁵ In response to the *Bailey WVLA NAL*, Bailey had the opportunity to submit “a written statement seeking reduction or cancellation of the proposed forfeiture, including a detailed factual statement in support of its request for reduction or cancellation of the proposed forfeiture, and supported by pertinent documents and affidavits.”¹⁶ Bailey failed to request reduction of the proposed forfeiture based on any of the established factors. Instead, Bailey asserted in its response that “[i]f the Bureau will promptly reduce, by any reasonable procedural action it chooses, Bailey’s liability in this matter to a total of \$15,000, that forfeiture will be paid promptly.”¹⁷ Bailey has thus failed to provide the Bureau with a legitimate basis for

⁷ Bailey Letter at 1.

⁸ 47 U.S.C. § 325; 47 C.F.R. § 76.64.

⁹ See 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(b)(5) Note.

¹⁰ Enforcement Complaint Concerning WGMB-TV, Baton Rouge, Louisiana (dated Jan. 23, 2012); Enforcement Complaint Concerning WVLA-TV, Baton Rouge, Louisiana (dated Jan. 25, 2012).

¹¹ *Silv Communication Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 5178 (2010) (“*Silv NAL*”).

¹² Bailey Letter at 1-2.

¹³ *Silv NAL*, 25 FCC Rcd at 5185-86, ¶ 16.

¹⁴ See, e.g., *Birach Broadcasting Corporation*, Notice of Apparent Liability for Forfeiture and Order, 25 FCC Rcd 2635 (EB, March 18, 2010) (involving the unauthorized transfer of control of a station, and the failure to staff the main studio of the station as required); *Birach Broadcasting Corporation*, Notice of Apparent Liability for Forfeiture and Order, 25 FCC Rcd 2643 (EB, March 18, 2010) (same); *Comcast Corporation*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 17030 (EB, Sept. 21, 2007) (involving a violation of the sponsorship identification rules related to the cablecast of portions of a video news release); *Comcast Corporation*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 17474 (EB, Sept. 26, 2007) (same).

¹⁵ 47 C.F.R. § 1.80(b)(6).

¹⁶ *Bailey WVLA NAL*, 27 FCC Rcd at 2629, ¶ 10.

¹⁷ Bailey Letter at 2 (“If the Bureau will promptly reduce, by any reasonable procedural action it chooses, Bailey’s liability in this matter to a total of \$15,000, that forfeiture will be paid promptly. This proposal is not subject to further

reducing the proposed forfeiture. We, therefore, affirm and issue a monetary forfeiture in the amount of fifteen thousand dollars (\$15,000).

6. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended,¹⁸ and Sections 0.61, 0.283, and 1.80 of the Commission's rules,¹⁹ Bailey Cable TV, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$15,000 for violations of Section 325 of the Act and Section 76.64 of the Commission's rules.²⁰

7. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to section 504(a) of the Act. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must also be submitted. An FCC Form 159 may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>. When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail 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. Payment by credit card may be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov. Bailey Cable TV, Inc. shall also send electronic notification on the date said payment is made to Diana Sokolow at Diana.Sokolow@fcc.gov.

8. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by both First Class Mail and Certified Mail, Return Receipt Requested, to Bailey Cable TV, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief
Media Bureau

negotiation. If rejected by the Bureau, Bailey is prepared for a lengthy review process, if necessary.”).

¹⁸ 47 U.S.C. § 503(b).

¹⁹ 47 C.F.R. §§ 0.61, 0.283, 1.80.

²⁰ 47 U.S.C. § 325; 47 C.F.R. § 76.64.