

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In re Application of	)	
	)	
NPG OF MISSOURI, LLC	)	File No. BRC DT-20130925AHF
	)	
Television Station KMIZ,	)	
Facility ID Number 63164	)	
Columbia, MO	)	
	)	
For Renewal of License	)	
To: Office of the Secretary		
Attn: Chief, Media Bureau		

**INFORMAL OBJECTION**

Goodrich Quality Theaters, Inc. ("GQTI"), by its attorneys, hereby lodges this Informal Objection to the above-referenced application for renewal of the license of Television Station KMIZ, Columbia, Missouri.

GQTI is the owner and operator of a multi-screen movie theater, known as the Capitol 8, in Jefferson City, Missouri. For purposes of an Informal Objection, it is not necessary for the objector to demonstrate standing.<sup>1</sup>

On May 9, 2013, Station KMIZ broadcast a news program titled "ABC 17 News at 6" including a segment which purported to show an event which occurred at the Capitol 8 theater on May 3, 2013. In fact, what was broadcast was not the event it purported to be. Attached hereto as Attachment A is a copy of the relevant portions of a

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<sup>1</sup> See *Nextel License Holdings 4, Inc., Order*, 17FCC Rcd. 7028, 7033 (WTB 2002).

complaint filed with the FCC by the manager of the Capitol 8 theater dealing with this matter.<sup>2</sup>

The May 3 “event” was actually a promotion for the newly-released “Iron Man 3” film. It consisted of some actors, in costume, and carrying fake weapons, walking across a parking lot and into the theater. The same promotion had also been carried out the day before, on May 2. Apparently some onlooker mistook the promotion for something more sinister and called the police. As noted in the Complaint, a total of three patrol cars, with six officers in total, arrived. The third left almost immediately, and only two officers actually entered the theater. Within two minutes the entire investigation was completed.

What was shown on the KMIZ news program on May 9 was entirely different. The footage shown was stock footage of an earlier SWAT team training exercise. No SWAT team actually appeared on May 3.

As noted in the Complaint, the Station KMIZ News reporter acknowledged that what was broadcast was not the actual May 3 incident, but stock footage. Thus, the station knew that the broadcast was not what it was purported to be, but failed to let the viewing public know of that fact. The false telecast caused severe embarrassment to the theater and friction between GQTI and the management of the shopping center in which the theater is located.

The Complaint to the FCC was summarily rejected, citing Constitutional and statutory prohibitions of censorship. However, censorship was never the issue.

The “event” which was the subject of the news report was a small, and quickly resolved, incident which involved two police officers entering the building, and emerging a few minutes later. What viewers of the news report saw was a full-scale SWAT team

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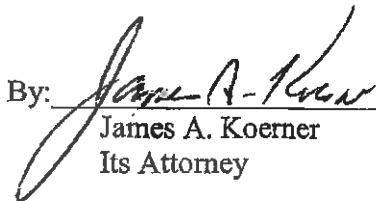
<sup>2</sup> Complaint # 13-C00502696-1.

assault upon the building. The issue, therefore, is whether a knowing and deliberate falsification of a news "event" should be condoned by the FCC.<sup>3</sup>

It may well be that the KMIZ broadcast was not in violation of the Communications Act or of the Rules and Regulations. Notwithstanding, it cannot reasonably be considered that such a knowing, deliberate and intentional falsification of a purported news event is operation "in the public interest". Insertion, in a news broadcast, of "stock footage" to convey the impression that the scene was the actual event being reported cannot be done without the knowledge and consent of station or news department management. Even if the station is not subject to a monetary forfeiture, it should certainly be subject to admonishment which will become a part of its record.

Respectfully submitted,

GOODRICH QUALITY THEATERS, INC.

By:   
James A. Koerner  
Its Attorney

Koerner & Olender, P.C.  
11913 Grey Hollow Court  
North Bethesda, MD 20852

(301) 468-3336

December 31, 2013

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<sup>3</sup> See *Hunger in America*, 20 FCC 2d 143 (1969).

**ATTACHMENT A**

**PORTION OF COMPLAINT TO FCC**

Form 2000E Media (General) Complaint

Consumer's Information:

First Name: **ROBERT** Last Name: **WILKINS**

Company Name: **GOODRICH QUALITY THEATERS, INC**

(Complete only if you are filing this complaint on behalf of a company or an organization.)

Post Office Box Number:

(Official Post Office box Number Only)

Address 1: **3550 COUNTRY CLUB DR**

Address2:

Mailing Address (where mail is delivered)

City: **JEFFERSON CITY** State: **MO** Zip Code: **65109**

Telephone Number (Residential or Business): **Phone:(573) 893 - 3811**

E-mail Address: **RWILKINS@GQTI.COM**

\*\*\* ANSWER EACH QUESTION THAT APPLIES TO YOUR SPECIFIC COMPLAINT \*\*\*

1. What is the name of the company that is the subject of your complaint? : **N.P.G. OF MISSOURI SUBSIDIARY OF NEWS PRESS & GAZETTE CO.**
2. If your complaint is about a radio or television station, provide the following information:
  - a. Station call sign (e.g., **KDID," WZUF," KDIU-FM," WZUE-TV**): **KMIZ-TV**
  - b. Radio station frequency (e.g., **1020" or 88.5"**):  
or TV channel (e.g., **13"**): **17**
  - c. Station location: City: **COLUMBIA** State: **MO**
3. If you are complaining about a cable or satellite operator (e.g., Comcast, Time Warner, DirecTV), provide the following information:
  - a.Operator name:
  - b.Operator location: City: State:
4. If you are complaining about a particular program, provide the following information:
  - a. Network: **ABC**
  - b. Program name: **ABC 17 NEWS AT 6**
  - c. Date of program (mm/dd/yyyy): **05/09/2013 06:00:00 PM**
5. Provide the details of your complaint, including the time, date and nature of any conduct or activity complained of and identifying information for companies, institutions or individuals involved (if not

Online Link to Video:

<http://www.abcl7news.com/news/movie-theater-publicity-stunt-triggers-officers-to-respond-to-active-shooter-situation/-/18421100/20089958/-/66o97fz/-/index.html>

Headline: "Movie Theater stunt triggers officers to respond to active shooter situation."

Video footage used of a SWAT team was not depicting the Friday May 3, 2013 circumstances at Capital 8. 17 News reporter Daniel Winn told Bob Wilkins, Capital 8 Manager that the SWAT footage used in his news feature that initially broadcasted on Thursday 5/9/13 was a training sequence of the Jefferson City Police Department. This "stock" SWAT footage had nothing to do with any police presence at the Capital 8. The use of SWAT footage sensationalized Mr. Winn's report. This stock SWAT footage presented a false inference of how the police responded to a call assumed to be from a moviegoer at the Capital 8.

Officers in two patrol cars responded to the 911 call on Friday 5/3/13 who were in the immediate area. A third patrol car arrived after the first two and left almost immediately. There were three cars with six officers total. Only two officers entered the Capital 8 building. The other four officers didn't leave their cars.

The officers checked the theater in less than two minutes.

KMIZ-TV Channel 17 (ABC) Jefferson City, MO's nearly three minute "news" report by means of deliberate news staging deceived all its viewers: those watching live, those seeing it repeated on-air and those who watched it by streaming it online.

This 5/9/13 news report was principally created to make a routine police response sensational. The totally false use of a rifle and then SWAT team footage manipulated the viewers both on-air and those streaming that there were serious dangers at the Capital 8 such that the police had to make an armed and enforced response.

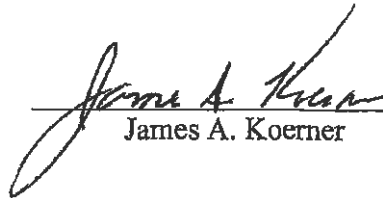
The local (in costume IRON MAN 3) players known as Cosplacon were in the Capital 8 as movie characters for photo opportunities when the police checked the Capital 8. Cosplacon players had been at the Capital 8 in IRON MAN costumes Thursday May 2<sup>nd</sup>. Cosplacon players have frequently been at the Capital 8 dressed in costumes depicting characters of various movies.

A KMIZ-TV General Manager's admission of improper news staging and an apology to the viewers must be provided.

**CERTIFICATE OF SERVICE**

I, James A. Koerner, do hereby certify that a copy of the foregoing Informal  
Objection was served this 31<sup>st</sup> day of December, 2013, via first class U.S. Mail, postage  
prepaid, upon the following:

Robert Lewis Thompson, Esq.  
Smithwick & Belendiuk, PC  
5028 Wisconsin Avenue, N.W.  
Suite 301  
Washington, DC 20016  
*Counsel for NPG of Missouri, LLC*

  
\_\_\_\_\_  
James A. Koerner

**Before the  
Federal Communications Commission  
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**In re: Application of:**

NPG of Missouri, LLC	) File No. BRC DT-20130925AHF
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KMIZ (TV)	) Facility ID # 63164
Columbia, MO	)
	)
For Renewal of License	)

To: Secretary

Attn: Hossein Hashemzadeh Deputy Chief, Video Division, Media Bureau
---

**RESPONSE TO INFORMAL OBJECTION**

NPG of Missouri, LLC, licensee of KMIZ (TV) (hereafter “KMIZ” or “Station”), hereby submits this Response to the “Informal Objection,” dated December 31, 2013 (“Objection”), by Goodrich Quality Theaters, Inc., owner and operator of multi-screen “Capitol 8 Theater,” in Jefferson City, MO<sup>1</sup> (hereafter “Theater”).<sup>2</sup>

Not only does the Theater’s pleading contain factual errors, it lacks any substantive basis for the FCC even to delay the grant of KMIZ’s pending license renewal application -- much less, as the Theater asks, for the FCC to “admonish” the Station.<sup>3</sup>

Indeed, it challenges one’s memory to recall *any* Objection, ever filed against *any* TV station’s license renewal in the FCC’s eight-decade history, that is based on a more bizarre, perverse and disquieting factual record than is revealed in this matter. In short, this Objection

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<sup>1</sup> The actual name of the theater is “Capital 8 Theater.” See Appendix A, emphasis added.

<sup>2</sup> FCC Counsel for Theater has consented to an extension of time within which KMIZ might file this Response to the Objection (to the extent that KMIZ’s request herein for such an extension is deemed required).

<sup>3</sup> See Objection at 3.



involves an incendiary May 3, 2013 publicity stunt whereby the Theater hired costumed and (fake) weapon-carrying actors to stage a **simulated armed attack** on the Theater's premises, where the movie "IRON MAN 3" was opening.<sup>4</sup> Thus, this outrageous stunt, which triggered an immediate emergency response by six local police officers to what they were told was an "active shooter situation," reasonably appeared to be yet another gun incident at an American movie theater.<sup>5</sup> The Theater's staged armed attack was instantly and roundly condemned by theater patrons, local citizens and local police.<sup>6</sup>

In such circumstances, what is the basis for the "Objection" filed last month by the Theater against KMIZ's license renewal with respect to the horrific stunt that the Theater itself had perpetrated? It is, namely, an assertion that KMIZ's coverage of this outrageous stunt, on KMIZ's May 9, 2013 "ABC17 News at 6,"<sup>7</sup> contained video footage that was misleading!<sup>8</sup>

While the Theater asserts that KMIZ's usage of "stock footage"<sup>9</sup> constituted a falsification of a *purported news event*,<sup>10</sup> the facts are otherwise. First, although other contemporaneous broadcasts of this news story (after KMIZ's newscast at 6PM on May 9, 2013) did contain the local police video to which the Theater objects,<sup>11</sup> the local police video used in those other KMIZ broadcasts was NOT "stock footage" as that term is commonly used by local TV news departments;<sup>12</sup> rather, it was contemporaneous video featuring the *same local police force* that did, in fact, respond to the Theater's stunt on May 3, 2013. See Appendix A. Indeed, the video

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<sup>4</sup> The Theater concedes that these "armed" actors proceeded from the parking lot into the Theater itself. *Id.* at 2.

<sup>5</sup> The tragic shooting at an Aurora, CO movie theater occurred on July 20, 2012.

<sup>6</sup> See, e.g., Appendix B (transcript of 5/9/2013 newscast at 9PM & 10PM, quoting inter alia local Police Officer Shoemaker).

<sup>7</sup> In fact, KMIZ's "ABC 17 News at 6" on May 9, 2013 **did not** contain the video to which Theater objects. See Appendix A. Given this procedural deficiency alone, Theater's basis for **any relief** should be summarily denied.

<sup>8</sup> The Objection specifically alleges that KMIZ broadcast a "deliberate and intentional *falsification of a purported news event* that was not in the "public interest." See Objection at 3, emphasis added.

<sup>9</sup> The subject video was NOT "stock footage." See Appendix A.

<sup>10</sup> See Objection 2-3. Theater fails to explain why this outrageous stunt--requiring an emergency police reaction--was a "*purported news event*." *Id.*, emphasis added.

<sup>11</sup> See Appendix A at paragraph 3.

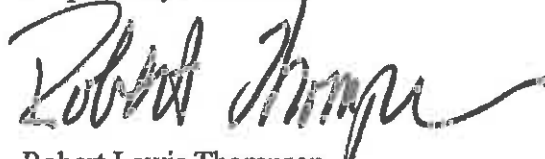
<sup>12</sup> *Id.*

was of the *local police force's* subsequent training exercise—only one week *after* the Theater's staged armed attack--about which local police had advised KMIZ *in advance* was being held on May 9, 2013, to train for any future shooting incident at a local theater; in fact, local police had expressly invited KMIZ to record video of this training exercise if the Station desired. *Id.* In sum, and even assuming that the subject "ABC 17 News at 6" broadcast on May 9, 2013 had contained the subject "footage" about which the Theater complains, KMIZ's brief use of contemporaneous video of the local police force responding to a shooting incident does not constitute a "deliberate falsification of a *purported* news event," as alleged by the Theater.<sup>13</sup>

#### CONCLUSION

In such bizarre and disquieting circumstances as are presented in this unusual case, it is decisively noteworthy that the Objection expressly concedes that the subject KMIZ broadcast<sup>14</sup> may NOT be "in violation of the Communications Act or the [FCC's] Rules and Regulations."<sup>15</sup> Indeed, the Objection should be summarily dismissed or denied.<sup>16</sup>

Respectfully submitted,



Robert Lewis Thompson  
SMITHWICK & BELENDIUK, PC  
5028 Wisconsin Ave., NW, Ste. 301  
Washington, DC 20016  
(202) 363-4409 (direct)

Counsel for NPG of Missouri, LLC

January 23, 2014

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<sup>13</sup> KMIZ's General Manager has instructed the KMIZ news department that, going forward and out of an abundance of caution, *any* such use of previously or subsequently recorded video must be clearly so identified. *Id.*

<sup>14</sup> See Note 7, *supra* (the May 9th broadcast on KMIZ at 6PM did NOT contain the allegedly misleading "footage").

<sup>15</sup> See Objection at 3.

<sup>16</sup> Although the Theater cites a "Complaint" filed with the FCC (*Id.* at 2, citing "#13-C00502696-1"), KMIZ has never been provided with a copy of such Complaint. See Appendix A. In any event, the Theater concedes that *the Complaint "was summarily rejected" by the FCC* (Objection at 2, emphasis added).

Sworn Statement of Gene Steinberg

My name is Gene Steinberg, a resident of Columbia, Missouri, and I am the General Manager of the "The Networks of Mid-Missouri," which include KMIZ (TV) (ABC) and KQFX-LD (FOX), Columbia, MO. I have read the "Informal Objection," dated December 31, 2013 ("Objection"), filed with the Federal Communications Commission ("FCC") by Goodrich Quality Theaters, Inc., owner and operator of a multi-screen movie theater described as Theater as "Capitol 8" [sic] in Jefferson City, MO ("Theater").

1. The Theater at issue is actually named "*Capital 8 Theater*," emphasis added.
2. The May 9, 2013 newscast on KMIZ (TV) at 6PM -- "ABC 17 news at 6" -- did not, in fact, feature any "video of the local police training" as asserted by the Objection. In fact, that video was taken subsequent to the May 3, 2013 faked attack. Indeed, KMIZ was alerted by local police officer Shoemaker on May 9, 2013, that a training exercise—would be held that day and that KMIZ could take video of that local police SWAT Team training for any future actual attack.
3. The video that is the subject of the Objection—which was used in other newscasts on KMIZ (TV) at other times and on other days—was not "stock footage," as alleged in the Objection. Rather, the video was of the same local police force that responded to the Theater's May 3, 2013 faked but realistic armed attack on the Capital 8 Theater. The Objection also inaccurately states that the video was from "an earlier SWAT team training exercise" by the local police when, in fact, the video of the local police was from a training exercise after the Theater's staged, May 3, 2013 armed attack. In such circumstances, the video at issue was not only contemporaneous with the Theater's outrageous stunt just the week before but also was video of the same police force that actually did respond to the Theater's May 3, 2013 faked armed attack on the Theater. In my 20 plus years in broadcasting, such video cannot fairly be described as "stock footage. It was contemporaneous video of the kind that often is used by TV news departments. Going forward, however, I have instructed the news staff of the Networks of Mid-Missouri to always caption such relevant, contemporaneous video as either previously or subsequently recorded.
4. Neither KMIZ nor I as General Manager have ever received a copy of any Complaint filed by the Theater at the FCC.

Sworn to under penalty of perjury this 21<sup>st</sup> day of January 2014.



Gene Steinberg

APPENDIX B

**Transcript of Jefferson City movie theater scare- May 9, 2013- 9pm/10pm**

On Cam Anchors:

IMAGINE WATCHING A MAN WALK INTO A MOVIE THEATER IN FULL TACTICAL GEAR, CARRYING A GUN.

TONIGHT MANAGEMENT AT THE CAPITAL 8 THEATER IN JEFFERSON CITY IS SPEAKING OUT FOR THE FIRST TIME SINCE POLICE WERE CALLED FOR WHAT THEY WERE TOLD WAS AN ACTIVE SHOOTER SITUATION.

IT HAPPENED THIS PAST WEEKEND DURING THE OPENING OF THE NEW IRON MAN 3 MOVIE...IT TURNED OUT TO BE NOTHING BUT A PUBLICITY STUNT.

ABC 17'S DANIEL WINN SPOKE WITH POLICE, WITNESSES, AND MANAGEMENT.

DANIEL, IT SOUNDS LIKE POLICE WERE NOT TOO HAPPY, THEY WEREN'T HAPPY, BUT THE THEATER IS STANDING BY THE PROMOTION...

[TAKE LIVE]

{\*\*\*LIVE\*\*\*}

[CG DANIEL]

YEAH, THEY DEFINITELY ARE, THEY SAY THEY ARE THERE TO DO A JOB, AND THAT'S ENTERTAIN AND THEY WOULD DO THAT AGAIN.

BUT, POLICE AND MOVIE GOERS ARE QUESTIONING THAT LOGIC AFTER INCIDENTS LIKE NEWTOWN, CONNECTICUT AND AURORA, COLORADO.

[TAKE PKG

DURATION:1'45"]

{\*\*\*PKG\*\*\*}

<"WE HAD JUST FINISHED WATCHING IRON MAN 3"

JOHN MORLOCK IS A RETIRED ARMY WAR VETERAN.

HE SUFFERS FROM POST TRAUMATIC STRESS SYNDROME.

A TRIP TO THE MOVIES LAST WEEKEND TRIGGERED MEMORIES HE NEVER WANTED TO RELIVE.

MORLOCK "WE'RE JUST GETTING INTO THE CAR WHEN I SPOTTED A MAN IN FULL ASSAULT GEAR. CARRYING WHAT APPEARED TO BE A MODIFIED M-4 AND A NINE MILLIMETER ON HIS SIDE WALKING TOWARD THE THEATER."

HE DIDN'T CALL POLICE...BUT SEVERAL OTHERS DID

SHOEMAKER: "WE RECEIVED THE CALL, A SERIES OF 911 CALLS STATING THAT A MAN DRESSED IN ALL BLACK WITH WHAT APPEARED TO BE BODY ARMOR WITH A RIFLE WAS WALKING INTO CAPITAL 8 THEATERS"

IT WAS A FULL RESPONSE... POLICE THOUGHT THEY WERE WALKING INTO AN ACTIVE SHOOTER SITUATION... SHOEMAKER "EVERYTHING'S IN PLACE, IT'S THE OPENING OUT OF A SUPERHERO MOVIE, IT'S SOMEBODY WALKING IN ALL DARK CLOTHES, IT'S CARRYING A RIFLE, IT'S EVERYTHING POINTS TO BAD THINGS THAT ARE ABOUT TO HAPPEN, THERE'S REALLY NO GOOD THAT CAN COME OF THAT

BUT THANKFULLY IT WASN'T BAD.... IT WAS ALL PART OF A MOVIE OPENING....

WILKINS: "DID YOU TAKE INTO CONSIDERATION WHAT HAPPENED IN COLORADO WHEN YOU WERE THINKING ABOUT PUTTING THIS TOGETHER?....

*ABSOLUTELY THAT'S MY NUMBER ONE PRIORITY EVERY SINGLE DAY WHEN I COME INTO THIS BUILDING IS THE SAFETY AND SECURITY OF THE GUESTS THAT I HAVE IN THIS BUILDING"*

*MANAGER BOB WILKINS TELLS ME THIS WAS PLANNED MONTHS IN ADVANCE AND ONLY A FEW PEOPLE WERE UPSET, BUT HUNDREDS WERE ENTERTAINED.*

*WILKINS "NO REGRETS FOR ALLOWING THIS PUBLICITY STUNT?? NO, MY JOB IS TO ENTERTAIN PEOPLE"*

*MORLOCK "THAT'S JUST UNBELIEVABLE IT REALLY IS, IT'S UNBELIEVABLE, THE WHOLE COUNTRY IS TALKING ABOUT GUN CONTROL BECAUSE OF SHOOTINGS AT THEATERS AND SCHOOLS"*

*SHOEMAKER "IT'S AN UNFORTUNATE LACK OF WISDOM IN THIS PARTICULAR JUDGMENT THAT HOPEFULLY WILL NEVER OCCUR AGAIN">*

[TAKE: ONCAM TAG]

{\*\*\*ONCAM TAG\*\*\*}

SHOEMAKER WENT ON TO SAY HE'S GLAD ONE OF HIS OFFICERS WASN'T THERE OFF DUTY BECAUSE IT'S LIKELY THEY WOULD HAVE TRIED TO ENGAGE THE ACTOR...AND HAD THE ACTOR NOT PUT DOWN THE FAKE WEAPONS, HE'S WORRIED THINGS COULD HAVE TURNED OUT MUCH WORSE.

LIVE IN JEFFERSON CITY, DANIEL WINN ABC 17 NEWS.

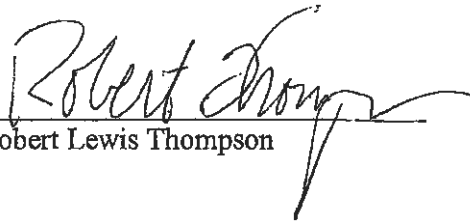
On Cam Anchors:

THE POLICE DEPARTMENT SAYS THEY HAVE A GOOD RELATIONSHIP WITH THE THEATER, IRONICALLY, THE SWAT TEAM HAD ACTIVE SHOOTER TRAINING THERE JUST A COUPLE OF MONTHS AGO.

**CERTIFICATE OF SERVICE**

**I, Robert Lewis Thompson, Of Counsel to Smithwick & Belendiuk, P.C., certify that on January 23, 2014, a copy of the foregoing "Response" of NPG of Missouri, LLC to the Informal Objection, filed by Goodrich Quality Theaters, Inc. was served on the below-named counsel for the only other party to the foregoing proceeding by prepaid, First Class US mail.:**

James A. Koerner, Esq.  
Koerner & Olender, P.C.  
11913 Grey Hollow Court  
North Bethesda, MD 20852

  
Robert Lewis Thompson