

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

In the Matter of)	
)	
Charter Communications VI, LLC)	
Burlington, Colorado)	NAL/Acct. No.: 200112000001
)	EB-00-DV-151
)	Physical System ID: 006725

NOTICE OF APPARENT LIABILITY FOR MONETARY FORFEITURE

Adopted: April 13, 2001

Released: April 16, 2001

By the Chief Cable Services Bureau:

I. INTRODUCTION

1. In this Order we find that Charter Communications VI, LLC, (“Charter”) is apparently liable for a forfeiture of \$20,000 for repeated violation of the signal leakage standards and willful failure to comply with a cease operations order. Enforcement Bureau field engineers conducted this investigation as part of routine enforcement of the cable signal leakage rules.

II. BACKGROUND

2. The Commission has established cable signal leakage rules to control emissions that could cause interference to aviation frequencies from cable systems. Protecting the aeronautical frequencies¹ from harmful interference is of paramount importance.² To this end, the Commission established basic signal leakage standards.³ We have determined the tolerable levels of unwanted signals on the aeronautical frequencies in two ways. Signal leakage levels that exceed these thresholds are considered harmful

¹ The aeronautical bands are 108-137 MHz and 225-400 MHz. These frequencies encompass both radionavigation frequencies, 108–118 MHz and 328.6–335.4 MHz, and communications frequencies, 118–137 MHz and 225–328.6 MHz and 335.4–400 MHz. Deserving particular protection are the international distress and calling frequencies 121.5 MHz, 156.8 MHz, and 243 MHz. *See* 47 C.F.R. §76.616. These frequencies are critical for Search and Rescue Operations including use by Emergency Locator Transmitters (ELT) on planes and Emergency Position Indicating Radio Beacons (EPIRB) on boats. *See generally* 47 C.F.R. Part 80, Subpart V and 47 C.F.R. §§87.193–87.199.

² Harmful Interference includes any interference that “endangers the functioning of a radionavigation service or of other safety services.” *See* 47 C.F.R. §§2.1 & 76.613(a).

³ Memorandum Opinion and Order, Amendment of Part 76 of the Commission’s Rules to Add Frequency Channelling Requirements and restrictions and to require Monitoring for Signal Leakage from Cable Television Systems, Docket No. 21006, 101 F.C.C.2d 117, para. 14 (1985) [*hereinafter* MO&O].

interference. First, leakage at any given point must not exceed 20 $\mu\text{V}/\text{m}$.⁴ Second, we set basic signal leakage performance criteria for the system as a prerequisite for operation on aeronautical frequencies. This is the system's Cumulative Leakage Index (CLI). We require annual measurement of each system's CLI to demonstrate safe levels of signal leakage,⁵ the results of which must be reported to us.⁶ We also require routine monitoring of the system to detect leaks.⁷ Whenever harmful interference occurs, the cable system operator must eliminate it.⁸ Further, should the harmful interference not be eliminated, we will intervene and require cessation of operation of the portion of the system involved or reduction of power⁹ below the levels specified in Section 76.610 of the Commission's Rules.¹⁰ Because we cannot insure that leakage will not occur, we have also retained the requirement that the signal carriers of cable systems must be offset from the frequencies used by aeronautical services.¹¹

III. DISCUSSION

3. On April 17, 2000, the Commission's Denver Office conducted a routine examination of the system cable plant to identify leaks and determine compliance with the basic signal leakage criteria. Fourteen leaks were measured, which ranged from 83 $\mu\text{V}/\text{m}$ to 2,219 $\mu\text{V}/\text{m}$. The system CLI was found to have a CLI ($10 \log I_{\infty}$) in excess of 64.¹² Inspection of the headend the same day also revealed violation of several record-keeping requirements.¹³ At the inspection, by direction of the Denver District Director, the field engineer orally instructed the General Manager of the system to cease operation on aeronautical band frequencies until the leaks were repaired and the system complied with the basic signal leakage criteria. On April 18, 2000, the oral order was followed by a written order delivered by fax at 9:30 am. Also on April 18, 2000, the field engineer returned to the system and determined that two of the largest leaks had not been repaired.¹⁴ At approximately 3:15 p.m., the Denver District Director spoke to the system General Manager in response to a telephone call received earlier from the General Manager. During the call, the District Director ascertained that the system had neither been shut down nor the power level on the aeronautical frequencies been reduced. The District Director informed the General Manager that the field inspector was in Burlington. The field inspector in Burlington determined that the system did not cease operation on

⁴ 47 C.F.R. §76.605(a)(12).

⁵ 47 C.F.R. §76.611(a).

⁶ 47 C.F.R. §76.615(b)(7).

⁷ 47 C.F.R. §76.614.

⁸ 47 C.F.R. §76.613(b).

⁹ 47 C.F.R. §76.613(c).

¹⁰ 47 C.F.R. §76.610.

¹¹ 47 C.F.R. §76.612. MO&O, *supra* note 3, at para. 14.

¹² The calculated CLI is 68.1. A maximum CLI of 64 is the basic signal leakage performance criteria of Section 76.611(a)(1) of the Commission's Rules. Leakage that exceeds this level is deemed to pose a serious threat to air traffic safety communications.

¹³ A current copy of the Commission's Rules were not available, 47 C.F.R. §76.301. A list of all broadcast television stations carried by the system was not available for public inspection, 47 C.F.R. §76.302(a). No proof of performance data was available for public inspection, 47 C.F.R. §76.305(a)(1). No current Basic Signal Leakage Performance Report, Form 320, was available; 47 C.F.R. §76.615.

¹⁴ The repair data submitted with the reply to the Notice of Violation indicates these leaks were repaired on April 20, 2000 together with two other leaks. The rest were repaired on April 18, 2000.

frequencies in the aeronautical band until approximately 3:20 pm.

4. The system requested authority to operate with full power on channel 16, for testing purposes, on April 24, 2000. Charter advised the Denver District Director on April 25, 2000, that the system was in compliance with the leakage restrictions and requested permission to resume normal operations. Permission was granted. The Commission field engineer conducted a follow-up examination of the system on April 27, 2000, and identified 23 leaks. The system did have, however, a CLI less than 64 at that time.

5. The Denver office issued an Official Notice of Violation on June 7, 2000. Charter responded on June 22, 2000. In their reply Charter simply states that the leakage violations have been corrected and that the system personnel acted as quickly as practicable to reduce power in the aeronautical frequency bands.

IV. CONCLUSION

6. The Commission assesses monetary forfeitures pursuant to Section 503(b) of the Communications Act of 1934, *as amended*, (“Act”)¹⁵ as implemented in Section 1.80 of the Commission’s Rules.¹⁶ A forfeiture may be assessed against a person who the Commission finds to have willfully or repeatedly failed to comply with the provisions of the Act or the Commission’s Rules.¹⁷ “Willful” in this context means that the person knew that he was doing the act in question, regardless of intent to violate the provision.¹⁸ “Repeated” means commission or omission of an act more than once. Forfeiture amounts are decided in accordance with Section 503(b)(2) of the Communications Act and the Commission’s forfeiture guidelines in Section 1.80(b)(4) of the Commission’s Rules.¹⁹

7. We conclude that Charter has repeatedly violated the Commission’s cable signal leakage rules. As discussed above, on April 17, 18, and 27, 2000, the cable system in Burlington, Colorado, had leaks that exceeded the maximum allowable field strength of 20 $\mu\text{V}/\text{m}$ at 3m, in repeated violation of Section 76.605(a)(12) of the Commission’s Rules.²⁰ On April 17, 2000, the system did not conform to the basic signal leakage performance criteria as required in violation of Section 76.611(a) of the Commission’s Rules.²¹ Finally, Charter failed to obey a direct instruction to suspend operation on April 17 and 18, 2000, in willful violation of Section 76.613(c) of the Commission’s rules.²²

8. The base forfeiture amount for violation of rules relating to distress and safety frequencies is \$8,000 per violation; the maximum is \$27,500 for each violation or each day of a continuing violation.²³

¹⁵ 47 U.S.C. §503(b).

¹⁶ 47 C.F.R. §1.80.

¹⁷ 47 C.F.R. §1.80(a)(2).

¹⁸ Southern California Broadcasting Company, 6 FCC Rcd 4387, para. 5 (1991).

¹⁹ 47 U.S.C. §503(b)(2), 47 C.F.R. §1.80(b)(4). *See also* The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate Forfeiture Guidelines, 12 FCC Rcd 17087.

²⁰ 47 C.F.R. §76.605(a)(12).

²¹ 47 C.F.R. §76.611(a).

²² 47 C.F.R. §76.613(c).

²³ 47 C.F.R. §1.80(b)(4).

Cable signal leakage in the aeronautical bands constitutes harmful interference to distress and safety frequencies. Further, multiple violations of the signal leakage standards were observed on each day and the system violated CLI. Therefore, an increase in the amount for each violation is warranted. We note, however, that the system at issue has just over 1,000 subscribers. We believe the appropriate forfeiture for Charter's repeated failure to comply with leakage limits on April 17, 18, and 27, 2000, is \$10,000. Failure to discontinue operations when instructed to do so by Commission staff, upon demonstration of a hazard to air navigation, is a serious offense and demands the maximum penalty. Considering the size of the system,²⁴ however, the appropriate forfeiture for willful failure to cease operation immediately upon receiving instructions to do so on April 17 and 18, 2000, is \$10,000. We, therefore, assess the forfeiture at \$20,000.

V. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, *as amended*, 47 U.S.C. §503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. §1.80, that Charter Communications VI, LLC, is HEREBY NOTIFIED of its APPARENT LIABILITY FOR MONETARY FORFEITURE in the amount of Twenty Thousand Dollars (\$20,000) for willful or repeated violation of 76.605(a)(12), 76.611(a) and 76.613(c) of the Commission's Rules, 47 C.F.R. §§76.605(a)(12), 76.611(a) and 76.613(c).

10. IT IS FURTHER ORDERED, PURSUANT TO Section 1.80(f)(3) of the Commission's Rules, 47 C.F.R. §1.80(f)(3), that Charter Communications VI, LLC, SHALL HAVE thirty (30) days from the release of this Notice to SHOW, IN WRITING, why a forfeiture should not be imposed or the amount should be reduced or to PAY THE FORFEITURE. Any showing as to why the forfeiture should not be imposed or should be reduced must include a detailed factual statement and all supporting documentation and affidavits.

11. Payment may be made by mailing a check or similar instrument payable to the order of the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should be marked "NAL Acct. No. 200112000001"

12. The response, if any, must be mailed to Federal Communications Commission, Cable Services Bureau, Engineering and Technical Services Division, 445 12th Street, SW, Washington, D.C. 20554, Ref: NAL/Acct. No.: 200112000001.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, SW,

²⁴ The Year 2000 Factbook lists the number of subscribers for the system as 1,053. Nevertheless, the size of the system does not allow the operator to ignore Commission orders, especially when safety-of-life is at issue. Further the owner of the system, Charter, is one of the largest MSOs in the country

Washington, D.C. 20554.²⁵

IT IS FURTHER ORDERED that a copy of this Notice be sent, by Certified Mail, Signed Receipt Requested, to Charter Communications VI, LLC, Suite 100, 12444 Powerscourt Drive, St. Louis, Missouri 63131.

FEDERAL COMMUNICATIONS COMMISSION

Deborah A. Lathen
Chief, Cable Services Bureau

²⁵ See 47 C.F.R. §1.1914.

APPENDIX A

<u>Date</u>	<u>Location</u>	<u>Frequency (MHz)</u>	<u>Field Strength (μV/m)</u>
April 17, 2000	Alley in back of 164 14 th Street	121.2625	83
	Alley in back of 293 13 th Street		90
	Alley in back of 424 14 th Street		178
	Alley in back of 527 13 th Street		138
	Alley in back of 1228 Martin Avenue		339
	Alley in back of 454 13 th Street		215
	Alley in back of 107 11 th Street		97
	Alley in back of 494 12 th Street		339
	Alley in back of 541 11 th Street		763
	Alley in back of 570 10 th Street		239
	Alley in back of 324 9 th Street		484
	Alley in back of 227 7 th Street		2219
	Alley in back of 280 5 th Street		449
	Across from 210 Pomeroy Street		239
April 18, 2000	Alley in back of 227 7 th Street	121.2625	240
	Alley in back of 1228 Martin Avenue	121.2625	625
April 27, 2000	Alley in back of 341 7 th Street	121.2625	131
	Alley in back of 425 7 th Street		188
	Alley in back of 555 7 th Street		114
	Alley in back of 637 7 th Street		87
	Alley in back of 542 7 th Street		93
	Alley in back of 340 6 th Street		27
	Alley in back of 465 5 th Street		83
	Alley next to 470 Webster Avenue		93
	Alley in back of 300 4 th Street		117
	Alley in back of 575 3 rd Street		34
	Across from 210 S. Pomeroy Street		205
	Alley next to 1680 Fay Street		154
	Alley in back of 1896 Frank Street		414
	Alley in back of 7 13 th Street		83
	Alley in back of 623 9 th Street		>20 ²⁶
	Alley in back of 528 11 th Street		188
	Alley in back of 259 11 th Street		339
	Alley in back of 115 13 th Street		52
	Alley in back of 173 13 th Street		104
	Alley in back of 293 13 th Street		69
	Alley in back of 257 15 th Street		69
Alley in back of 333 17 th Street	34		
Alley in back of 433 N. Pomeroy Street	52		

²⁶ Precise measurement could not be made due to electrical noise.

ATTACHMENT

IMPORTANT - READ INSTRUCTIONS AND RETURN ATTACHED FORM

The document you have received is a Notice of Apparent Liability (NAL). You may take any of the following actions under Section 1.80 of the Commission's Rules:

You may pay the full amount of the forfeiture within 30 days of the date of the NAL. In this case, you should complete the appropriate sections of the attached form and send it along with a check or similar instrument for the amount specified, made payable to the Federal Communications Commission. To assure that your payment is properly recorded, please enter on your check the control number appearing in the upper left hand corner of the attached form and return the extra copy of the NAL that is enclosed, together with the check, to:

Federal Communications Commission
Post Office Box 73482
Chicago, IL. 60673-7482

Within 30 days of the date of the NAL you may file a statement, in duplicate, as to why the proposed forfeiture should be reduced. The statement must be signed by the licensee or registrant; a partner, if the licensee or registrant is a partnership; by an officer, if the licensee or registrant is a corporation; or by a duly elected or appointed official, if an unincorporated association, and the statement must be supported by pertinent documents and affidavits. The statement may include any justification or any information that you desire to have considered. If you elect to follow this course, you should complete the appropriate section of the attached form and send it along with your statement. Upon such consideration, it will be determined whether any forfeiture should be imposed, and if so, whether any forfeiture should be imposed in full or reduced to some lesser amount. An order stating the result will be issued. Address your statement to:

Federal Communications Commission
Cable Services Bureau
Washington, D.C. 20554

You may take no action. In this case a Forfeiture Order will be issued after expiration of the thirty-day period ordering that you pay the forfeiture in full. If you decide to take no action, you need not return the attached form.

If, in response to this NAL, you claim a financial inability to pay the full amount of the forfeiture, you should furnish data to support your claim. The data submitted should include, but need not be limited to, a profit and loss statement that has been prepared under generally accepted accounting principles. The statement that you furnish should contain no data older than one year from the date of your response.

Items in the statement should include income from cable operations, expenses from cable operations (including noncash expenses, such as amortization and depreciation) and payments to principals (including salaries, commissions, management fees, interest, rents, etc.) If you are an individual or company with multiple cable holdings, you should furnish separate profit and loss statements for each entity you own or control, or a consolidated profit and loss statement. You are advised that all financial data furnished with your response will

be routinely available for public inspection absent a request for nondisclosure setting forth the reasons therefor pursuant to Section 0.457(d)(2)(i) of the Commission's Rules.

If you have any questions concerning this forfeiture proceeding please communicate them in writing to:

Federal Communications Commission
Cable Services Bureau
Washington, D.C. 20554

or contact Commission staff personnel by telephone at (202) 418-2355 or by FAX at (202) 418-1189.

FEDERAL COMMUNICATIONS COMMISSION
Washington D. C. 20554

NOTICE OF APPARENT LIABILITY
CONTROL NO: 200112000001

In response to a Notice of Apparent Liability for a monetary forfeiture under the provisions of Section 503(b) of the Communication Act of 1934, *as amended*:

(CHECK APPROPRIATE BOX)

- I am returning a copy of the Notice of Apparent Liability and enclosing a check or similar instrument, drawn to the order of the Federal Communications commission, in full payment of the forfeiture amount as indicated in the Notice of Apparent Liability. I have entered the control number appearing in the upper right hand corner of this page on my check and am submitting it to:

Federal Communications Commission
Post Office Box 73482
Chicago, IL. 60673-7482

- I am submitting a detailed statement of facts and reasons why I believe the forfeiture as assessed in the Notice of apparent Liability is not warranted and should be reduced or rescinded to:

Federal Communications Commission
Cable Services Bureau
Washington, D.C. 20554

Charter Communications VI, LLC
Licensee or Registrant

CO0015, Burlington, CO
Call sign or CUID, City, State

Signature of authorized official

Date

Amount of forfeiture as indicated by the NAL

NOTICE TO INDIVIDUAL REQUIRED BY THE PRIVACY ACT

Section 308(b) and 503(b) of the Communications Act of 1934, as amended, authorize the Commission to request this information, the purpose of which is to determine your liability for a forfeiture.

The staff will use all relevant and material information before it, including the information disclosed in your statement to determine whether the forfeiture should be cancelled, reduced or paid in full. Notices of Apparent Liability are a matter of public record.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-570, DECEMBER 31, 1974, 5 U.S.C. 532a(e)(3).