

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

In the Matter of)	File Number EB-02-AT-275
)	
Valley Cable TV, Inc.)	NAL/Acct. No. 200232480017
POB 508)	
602 College Street)	FRN 0006-1529-20
Fort Valley, Georgia 31030)	
)	
)	
)	

FORFEITURE ORDER

Adopted: October 27, 2003

Released: October 29, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000) to Valley Cable TV, Inc., (“*Valley*”) for willful and repeated violations of Sections 76.605(a)(12) and 76.611(a)(1) of the Commission’s Rules (“*Rules*”).¹ The noted violations involve excessive cable signal leakage.

2. On September 3, 2002, the District Director of the Commission’s Atlanta, Georgia Field Office (“*Atlanta Office*”) released a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Valley in the amount of \$8,000.² Valley filed its response to the *NAL* on October 2, 2002.

II. BACKGROUND

3. The Commission established cable signal leakage rules to control emissions that could cause interference to aviation frequencies from cable systems. Protecting the aeronautical frequencies³ from

¹47 C.F.R. §§76.605(a)(12), 76.611(a)(1).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232480017 (Enf. Bur., Atlanta Office, released September 3, 2002).

³ 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, 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 on planes and Emergency Position Indicating Radio Beacons on boats. See generally 47 C.F.R. Part 80, Subpart V and 47 C.F.R. §§87.193–87.199.

harmful interference is of paramount importance.⁴ To this end, the Commission established basic signal leakage standards.⁵ 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 interference. First, leakage at any given point must not exceed 20 microvolts per meter ($\mu\text{V}/\text{m}$).⁶ 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 (a CLI of less than 64),⁷ the results of which must be reported to us.⁸ We also require routine monitoring of the system to detect leaks.⁹ Whenever harmful interference occurs, the cable system operator must eliminate it.¹⁰ 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 power¹¹ below the levels specified in Section 76.610 of the Rules.¹²

4. On July 23 and 25, 2002, an agent from the Atlanta Office conducted a cable television signal leakage inspection of Valley's cable system located in Fort Valley, Georgia. The agent found that at 31 locations cable signal leakage on the frequency 121.2625 MHz significantly exceeded 20 $\mu\text{V}/\text{m}$ at a distance of at least three meters from each leakage in violation of Section 76.605(a)(12) of the Rules. The measured leaks ranged from 165 $\mu\text{V}/\text{m}$ to 983 $\mu\text{V}/\text{m}$. Based on these measurements, the agent calculated the system's CLI at a value of 68.3, exceeding the allowed CLI performance criteria of 64, in violation of Section 76.611(a)(1) of the Rules.

5. On July 25, 2002, the Atlanta Office issued an Order to Cease Operations, pursuant to Section 76.613(c) of the Rules.¹³ The system resumed normal operation on July 26, 2002, after being brought into compliance. The Atlanta Office issued a *NAL* on September 3, 2002, to Valley for violation of Sections 76.605(a)(12) and 76.611(a)(1) of the Rules.

6. Valley responded to the *NAL* on October 2, 2002. Valley stated that, due to extenuating circumstances, it had been negligent in its monitoring of its cable system for signal leakage during the previous two years. Valley stated that while correcting signal leaks it discovered that more than 15 of the large leaks were the result of theft of service, which it subsequently reported to the local police, and requested that the Commission consider reducing the forfeiture as a result. Valley provided no other information in its response regarding the signal leakage.

⁴ 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).

⁵ *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 FCC 2d 117, para. 14 (1985) (*hereinafter* MO&O).

⁶ 47 C.F.R. §76.605(a)(12).

⁷ 47 C.F.R. §76.611(a).

⁸ 47 C.F.R. §76.1804(g).

⁹ 47 C.F.R. §76.614.

¹⁰ 47 C.F.R. §76.613(b).

¹¹ 47 C.F.R. §76.613(c).

¹² 47 C.F.R. §76.610.

¹³ 47 C.F.R. §76.613(c).

III. DISCUSSION

7. The Commission assessed the proposed forfeiture amount in this case in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),¹⁴ Section 1.80 of the Rules,¹⁵ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”). Section 503(b) of the Act requires that, in examining Valley’s response, the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹⁶

8. Valley does not dispute the violations alleged by the *NAL*, but requests that the proposed monetary forfeiture be reduced because 15 of the large leaks were the result of theft of service.¹⁷ Section 312(f)(1) of the Act,¹⁸ which applies equally to Section 503(b) of the Act, provides that “[t]he term ‘willful,’ when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act”¹⁹ The term “repeated” means the commission or omission of an act more than once or, if such commission or omission is continuous, for more than one day.²⁰ Regardless of the reason for the cable leaks, Valley is responsible for due diligence in maintaining its system and preventing or minimizing leakage. Had it done so, it would have discovered and repaired the offending leaks, regardless of their cause, prior to our inspection of the cable system.

9. The Commission’s leakage rules are designed to protect aircraft safety communications from harmful interference. Based on the facts before us, we find that Valley willfully and repeatedly violated those rules. We are, therefore, not persuaded that the proposed forfeiture should be reduced.

10. We have examined Valley’s response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Valley willfully and repeatedly violated Sections 76.605(a)(12) and 76.611(a)(1) of the Rules, and find no basis for cancellation or reduction of the proposed \$8,000 monetary forfeiture.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act and Section 1.80(f)(4) of the Rules,²¹ Valley Cable TV, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in

¹⁴ 47 U.S.C. § 503(b).

¹⁵ 47 C.F.R. § 1.80.

¹⁶ 47 U.S.C. § 503(b)(2)(D).

¹⁷ Valley also states in its response that it is a “small company,” but does not directly request consideration based on, or provide supportive financial documentation demonstrating an inability to pay. See *NAL* at para. 10 and *also* 47 C.F.R. § 1.80(b)(4) (“Downward Adjustment Criteria”).

¹⁸ 47 U.S.C. § 312(f)(1).

¹⁹ See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

²⁰ 47 U.S.C. § 312(f)(2).

²¹ 47 C.F.R. § 1.80(f)(4).

the amount of eight thousand dollars (\$8,000) for willful and repeated violation of Sections 76.605(a)(12) and 76.611(a)(1) of the Rules.

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.²² Payment shall be made by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 200232480017, and FRN 0006-1529-20. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.²³

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail, Return Receipt Requested, and by First Class Mail to Robert Barnes, VP Operations, Valley Cable T.V., Inc., 602 College Street, PO Box 508, Fort Valley, Georgia 31030.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

²² 47 U.S.C. § 504(a).

²³ 47 C. F. R. § 1.1914