

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

In the Matter of)	
)	
Small Town Communications Partners I LP)	File Number EB-02-AT-380
Operator of Cable Television System in)	NAL/Acct. No. 200332480013
Cornersville, Tennessee)	FRN: 0000-0131-51
Nashville, Tennessee)	

FORFEITURE ORDER

Adopted: June 21, 2004

Released: June 23, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of six thousand four hundred dollars (\$6,400) to Small Town Communications Partners I LP (“STC”), the operator of Cable Television System in Cornersville, Tennessee for willful violation of Sections 76.605(a)(12) and 76.611(a)(1) of the Commission’s Rules (“Rules”)¹ related to cable television signal leakage.

2. On December 6, 2002, the Commission’s Atlanta, Georgia Field Office (“Atlanta Office”) released a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to STC in the amount of eight thousand dollars (\$8,000) for willful and repeated violation of Sections 76.605(a)(12) of the Rules and willful violation of Section 76.611(a)(1) of the Rules.² STC filed a response on January 6, 2003.

3. In its response to the *NAL*, STC denies that it willfully and repeatedly violated Section 76.605(a)(12) of the Rules and that it willfully violated Section 76.611(a)(1) of the Rules. STC also seeks rescission of the forfeiture based upon “multiple mitigating factors.” These factors are the limited extent of the leakage and the immediate correction by STC, the fact that the leakage was caused by wild animals, STC’s contention that it has been punished enough because of customer loss resulting from the cable system leakage, STC’s “spotless compliance record” and, STC’s claim that payment of the proposed forfeiture would result in “substantial financial hardship on the company.”

II. BACKGROUND

4. On October 30, 2002, an FCC agent from the Atlanta Office conducted a cable television signal leakage inspection of STC’s cable system located in Cornersville, Tennessee. The agent found that, at seven locations, cable signal leakage on the frequency 121.2625 MHz significantly exceeded 20 microvolts per meter at a distance of at least three meters from each leakage, in violation of Section 76.605(a)(12) of the

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

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332480013 (Enf. Bur., Atlanta Office, released December 6, 2002).

Rules. The measured leaks ranged from 255 $\mu\text{V}/\text{m}$ to 2080 $\mu\text{V}/\text{m}$. Based upon these measurements, the agent calculated the system's cumulative leakage index ("CLI") at a value of 68.7, exceeding the allowed cumulative signal leakage performance criteria of 64, in violation of Section 76.611(a)(1) of the Rules.

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),³ Section 1.80 of the Rules,⁴ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁵ In examining STC's response, Section 503(b) of the Act requires that 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 such other matters as justice may require.⁶

6. STC argues that the cable system leakage was "extremely limited" and immediately corrected, and, thus, rescission of the proposed forfeiture is warranted. STC claims that "the case involved a single leakage incident in two small areas of a single small cable system." However, the Commission agent found cable signal leakage at seven locations, which cumulatively exceeds the allowed cumulative signal leakage performance criteria. Additionally, STC's immediate remedial actions to correct the leakage problem subsequent to notification of the violation do not warrant rescission of the forfeiture.⁷ It is well established that "corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations."⁸

7. STC contends that it has no culpability for cable system leakage caused by wild animals. Assuming, arguendo, that STC's contention that the leaks were caused by wild animals is correct, it does not mitigate STC's violations in this case. Cable operators are required to monitor for and repair signal leaks⁹ regardless of their cause to ensure that their systems comply with our cable leakage standards which serve a critical public safety purpose.¹⁰ There is no evidence that STC had monitored these sites shortly before the FCC inspection and found no leaks present.

8. STC argues that it has been punished enough as a result of customer loss resulting from the

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ *See Radio Station KGVL, Inc.*, 42 FCC 2d 258, 259 (1973).

⁸ *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994); *see also Radio Station KGVL, Inc., at id.*, and *Executive Broadcasting Corp.*, 3 FCC Rcd 699, 700 (1968).

⁹ *See* 47 C.F.R. §§ 76.613(b), 76.614.

¹⁰ *See Callais Cablevision, Inc.*, 17 FCC Rcd 24808 (2002).

cable system leakage. Additionally, to support its financial hardship claim, STC submits Income Statements for the year 2001 and the first half of 2002. STC contends that these statements reflect significant losses. The Commission has determined that, in general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.¹¹ Based upon the information provided, STC has failed to demonstrate inability to pay the forfeiture.¹²

9. STC argues that it “did not willfully¹³ or repeatedly violate Commission regulations.”¹⁴ STC cites two cases, *In the Matter of Sam Bushman, Licensee, Station KNAK(AM)*¹⁵ (“*Bushman*”) and *Vernon Broadcasting, Inc.*¹⁶ (“*Vernon*”) in support of its position. However, these cases are inapposite. In *Vernon*, a proposed forfeiture for inadequate fencing was cancelled where the licensee submitted evidence that its fencing was monitored regularly and had been inspected to be found secure shortly before the FCC's inspection. Here, although STC claims it had a monitoring program, it failed to demonstrate that it had checked the sites found to exceed the leakage limits shortly before the FCC inspection and determined that there were no leaks present. As to *Bushman*, STC has failed to set forth any facts in that case which illustrate how it is relevant to this proceeding. In the instant case, the licensee has failed to exercise due diligence in having an effective cable system leakage monitoring system, resulting in willful violation of Sections 76.605(a)(12) and 76.61(a)(1) of the Commission's Rules.¹⁷

10. Considering the entire record and the factors listed above, we find that reduction of the proposed forfeiture is warranted because of the compliance record of STC with the Commission's Rules. Accordingly, the forfeiture amount is reduced from eight thousand dollars (\$8,000) to six thousand four hundred dollars (\$6,400).

¹¹ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992).

¹² *Id.* at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Afton Communications Corp.*, 7 FCC Rcd 6741 (Com. Car. Bur. 1992) (forfeiture not deemed excessive where it represented approximately 3.9 percent of the violator's gross revenues).

¹³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful,’ ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹⁴ Although the *NAL* refers to “repeated” violations of Section 76.605(a)(12) of the Rules, we decline to address it in light of our finding that the violation was willful. However, we note that the investigative report reflects that violations of the leakage requirements were found on two consecutive days, October 29 and 30, 2002.

¹⁵ *Memorandum Opinion & Order*, 17 FCC Rcd 24808 (Enf. Bur. 2002); *Forfeiture Order*, 17 FCC Rcd 14560 (Enf. Bur. 2002).

¹⁶ 60 RR 2d 1275 (1986).

¹⁷ See *Valley Cable TV*, 18 FCC Rcd 22277 (2003).

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act¹⁸, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules¹⁹, Small Town Communications Partners I LP, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of six thousand four hundred dollars (\$6,400) for its willful 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 Commission's Rules²⁰ 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.²¹ Payment may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or 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 the NAL/Acct. No. 200332480013, and FRN: 0000-0131-51 referenced above. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.²²

13. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by First Class and Certified Mail, Return Receipt Requested, to Small Town Communications Partners I LP, 225 Highland Villa Circle, Nashville, Tennessee 37211 and a copy to its counsel, George D. Callard, Cinnamon Mueller, 307 North Michigan Avenue, Suite 1020, Chicago, Illinois 60601.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁸ 47 U.S.C. § 503(b).

¹⁹ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

²⁰ 47 C.F.R. § 1.80.

²¹ 47 U.S.C. § 504(a).

²² See 47 C.F.R. § 1.1914.