

**Federal Communications Commission**

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

In the Matter of	)	
	)	
Orion Broadband	)	File No.: EB-FIELDWR-12-00003862
Cable System Operator	)	NOV No.: V201332940013
	)	
San Diego, California	)	Physical System ID: 015726

**NOTICE OF VIOLATION**

**Released: May 23, 2013**

By the District Director, San Diego Office, Western Region, Enforcement Bureau:

1. This is a Notice of Violation (Notice) issued pursuant to Section 1.89 of the Commission's rules (Rules)<sup>1</sup> to Orion Broadband, operator of a cable system in San Diego, California. Pursuant to Section 1.89(a) of the Rules, issuance of this Notice does not preclude the Enforcement Bureau from further action if warranted, including issuing a Notice of Apparent Liability for Forfeiture for the violations noted herein.<sup>2</sup>

2. On May 9, 2013, an agent of the Enforcement Bureau's San Diego Office inspected a cable system located at San Marcos, California, and observed the following violations:

- a. 47 C.F.R. § 76.1803: "MVPD's subject to §76.611 must submit the results of ground based measurements derived in accordance with 76.611(a)(1) or airspace measurements derived in accordance with §76.611(a)(2), including a description of the method by which compliance with the basic signal leakage criteria is achieved and the method of calibrating the measurement equipment. This information must be provided to the Commission each calendar year via FCC Form 320." As of May 9, 2013, there is no record that Orion had filed an FCC Form 320 for its system since 2007.<sup>3</sup>
- b. 47 C.F.R. § 78.29: "Licenses for CARS (Cable Television Relay Service) stations will be issued for a period not to exceed five (5) years." The agent found that Orion Broadband is transmitting on CARS frequencies at its

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<sup>1</sup> 47 C.F.R. § 1.89.

<sup>2</sup> 47 C.F.R. § 1.89(a).

<sup>3</sup> The San Diego issued a Letter of Inquiry (LOI) to Orion Broadband on August 12, 2012, asking if Orion Broadband had filed an application to renew its CARS license and if Orion Broadband had submitted a Basic Signal Leakage Performance Report, FCC Form 320. The San Diego office received a reply from Orion Broadband on December 12, 2012, that a renewal application had been filed and that Orion Broadband was not aware they were required to submit an FCC Form 320 annually.

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headend in San Marcos, California. The CARS license, call sign WLY-855, for Orion Broadband expired on February 1, 2011. The FCC has no record of receiving an application to renew this license.

3. Pursuant to Section 403 of the Communications Act of 1934, as amended,<sup>4</sup> and Section 1.89 of the Rules, we seek additional information concerning the violations and any remedial actions taken. Therefore, Orion Broadband must submit a written statement concerning this matter within twenty (20) days of release of this Notice. The response (i) must fully explain each violation, including all relevant surrounding facts and circumstances, (ii) must contain a statement of the specific action(s) taken to correct each violation and preclude recurrence, and (iii) must include a time line for completion of any pending corrective action(s). The response must be complete in itself and must not be abbreviated by reference to other communications or answers to other notices.<sup>5</sup>

4. In accordance with Section 1.16 of the Rules, we direct Orion Broadband to support its response to this Notice with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of Orion Broadband with personal knowledge of the representations provided in Orion Broadband's response, verifying the truth and accuracy of the information therein,<sup>6</sup> and confirming that all of the information requested by this Notice which is in the licensee's possession, custody, control, or knowledge has been produced. To knowingly and willfully make any false statement or conceal any material fact in reply to this Notice is punishable by fine or imprisonment under Title 18 of the U.S. Code.<sup>7</sup>

5. All replies and documentation sent in response to this Notice should be marked with the File No. and NOV No. specified above, and mailed to the following address:

Federal Communications Commission  
San Diego Office  
4542 Ruffner Street, Suite 370  
San Diego, CA 92111

6. This Notice shall be sent to Orion Broadband at its address of record.

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<sup>4</sup> 47 U.S.C. § 403.

<sup>5</sup> 47 C.F.R. § 1.89(c).

<sup>6</sup> Section 1.16 of the Rules provides that “[a]ny document to be filed with the Federal Communications Commission and which is required by any law, rule or other regulation of the United States to be supported, evidenced, established or proved by a written sworn declaration, verification, certificate, statement, oath or affidavit by the person making the same, may be supported, evidenced, established or proved by the unsworn declaration, certification, verification, or statement in writing of such person . . . . Such declaration shall be subscribed by the declarant as true under penalty of perjury, and dated, in substantially the following form . . . : ‘I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)’.” 47 C.F.R. § 1.16.

<sup>7</sup> 18 U.S.C. § 1001 *et seq.* See also 47 C.F.R. § 1.17.

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7. The Privacy Act of 1974<sup>8</sup> requires that we advise you that the Commission will use all relevant material information before it, including any information disclosed in your reply, to determine what, if any, enforcement action is required to ensure compliance.

FEDERAL COMMUNICATIONS COMMISSION

James T. Lyon  
District Director  
San Diego Office  
Western Region  
Enforcement Bureau

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<sup>8</sup> P.L. 93-579, 5 U.S.C. § 552a(e)(3).