

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

In the Matter of)	
)	
Callais Cablevision, Inc.)	
Grand Isle, Louisiana)	NAL/Acct. No.: X12000004
)	EB-00-OR-023
)	Physical System ID: 004760
)	
)	
)	

NOTICE OF APPARENT LIABILITY FOR MONETARY FORFEITURE

Adopted: January 17, 2001

Released: January 19, 2001

By the Commission:

I. INTRODUCTION

1. In this Order we find that Callais Cablevision, Inc., (“Callais”) is apparently liable for a forfeiture of \$133,000. The forfeiture is assessed for four infractions: 1) repeated violation of the signal leakage standards, 2) repeated violation of the frequency offset requirements in the aviation bands, 3) repeated failure to make the annual leakage tests, and 4) willful and repeated violation of the requirement to have prescribed equipment capable of receiving and sending EAS alerts to subscribers. This investigation was conducted by Enforcement Bureau field engineers in response to a complaint of interference to aircraft approach frequencies from the Federal Aviation Administration (“FAA”) in Houston, Texas.

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

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).

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 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

3. The Emergency Alert System ("EAS") provides the capability for the President to communicate emergency information to the public in a national emergency. It also may be used by state and local government to provide information to their residents in case of local disasters.¹² Cable systems must participate in the EAS.¹³ Cable systems with 10,000 or more subscribers were required to install EAS equipment in accordance with Section 11.11 by December 31, 1998.¹⁴ Specifically, these cable systems must install and operate EAS encoder and EAS decoder equipment. In addition, the equipment must be capable of transmitting audio and video EAS messages on all channels.¹⁵

III. DISCUSSION

4. On January 21, 2000, the Federal Aviation Administration (FAA) experienced interference to the operation of its Grande Isle, Louisiana, Remote Communication Air Ground ("RCAG") facility. In the course of his investigation, an FAA Airway Transportation Systems Specialist contacted the Commission's New Orleans Office for technical assistance. The Commission engineer advised the FAA that the characteristics of the interfering signal indicated that the source was leakage from a cable system.

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].

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 47 C.F.R. §11.1.

¹³ 47 C.F.R. §§11.11 & 11.41.

¹⁴ 47 C.F.R. §11.11.

¹⁵ *Id.*

The FAA personnel contacted Callais technicians to investigate the problem. Upon returning to the site on January 24, 2000, FAA personnel reported that the interference was no longer present. The FAA representative states that Callais told him that they found and repaired some cable leaks. Leakage monitoring logs supplied by Callais¹⁶ show that several leaks were found and repaired in the general vicinity of the FAA RCAG on January 21 and 22, 2000. The logs furnished by Callais indicate a signal leakage level of 80 $\mu\text{V}/\text{m}$ on January 21, 2000, near the FAA facility.

5. On February 8 and 10, 2000, the Commission's New Orleans Office conducted a follow up examination of the system cable plant to identify leaks and determine compliance with the basic signal leakage criteria. On February 8, 2000, seven leaks were measured, which ranged from 68 $\mu\text{V}/\text{m}$ to 1,068 $\mu\text{V}/\text{m}$. On February 10, 2000, seven additional leaks were measured, which ranged from 143 $\mu\text{V}/\text{m}$ to 2295 $\mu\text{V}/\text{m}$. These leaks were found in the nine miles, or 2.7%, of the system inspected. Nevertheless, even assuming no leaks in the rest of the system, it was found to have a CLI ($10 \log I_{\infty}$) in excess of 64.¹⁷ In addition the Commission field engineer found that the system had not offset carrier frequencies from aeronautical frequencies.

6. On February 11, 2000, the Commission's New Orleans Office conducted an inspection of the cable system headend. This inspection revealed that the required offset of carrier frequencies had not been performed despite the fact that equipment installed was apparently readily capable of doing so.¹⁸ On February 11, 2000, the District Director issued an Order to Cease Operations, pursuant to Section 76.613(c) of the Commission's Rules.¹⁹ The system was brought into compliance and normal operation resumed on February 17, 2000.

7. The inspection further revealed that Callais did not install EAS equipment as required by Section 11.11 of the Commission's rules. Although Callais had the capability to interrupt audio programming to provide emergency messages, its equipment did not comply with the EAS rules contained in Part 11. Specifically, Callais had not installed EAS encoder and EAS decoder equipment, or equipment to provide audio and video EAS messages on all channels as required by Section 11.11 of the Commission's rules. On February 29, 2000, an Official Notice of Violation ("NOV") was issued citing these latter two violations. On March 10, 2000, Callais replied to the NOV advising that they had offset the frequencies and had purchased the proper EAS equipment. On March 23, 2000, Callais notified the New Orleans Office that the EAS equipment had been received and installed. On May 19, 2000, Callais supplied the portion of its leakage repair log for January 21 and 22, 2000, as requested by the New Orleans District Office pursuant to Section 76.614 of the Commission's Rules.²⁰

¹⁶ See 47 C.F.R. §76.614.

¹⁷ The calculated CLI was 68.7 given generous tolerance for measurement error, including only leaks greater than 50 $\mu\text{V}/\text{m}$, and assuming no leaks in the portion of the system not inspected. 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.

¹⁸ The Commission has on file Basic Signal Leakage Performance Reports, FCC Form 320, dated June 29, 1992; July 12, 1993; August 16, 1994; June 30, 1997 (for calendar year 1996); June 30, 1997 (for calendar year 1997); and October 10, 1998, each of which contain an Exhibit A that asserts the aeronautical frequencies have been offset.

¹⁹ See 47 C.F.R. §76.613(c).

²⁰ 47 C.F.R. §614.

8. A review of Commission records shows that the most recent Basic Signal Leakage Performance Report, FCC Form 320, was filed on October 28, 1998, for tests performed on August 10, 1998.²¹ A test should have been performed before August 10, 1999, and should have been reported to us on or before December 31, 1999.²²

IV. CONCLUSION

9. The Commission assesses monetary forfeitures pursuant to Section 503(b) of the Communications Act of 1934, *as amended*, (“Act”)²³ as implemented in Section 1.80 of the Commission’s Rules.²⁴ 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.²⁵ “Willful” in this context means that the person knew that he was doing the act in question, regardless of intent to violate the provision.²⁶ “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.²⁷

10. We conclude that Callais has repeatedly violated the Commission’s cable signal leakage rules. As discussed above, on January 21, and February 8 and 10, 2000, the cable system in Grand Isle, Louisiana, 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.²⁸ On February 8 and 10, 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.²⁹ Since August 10, 1999, the system has not performed the annual tests for conformance with the basic signal leakage performance criteria in repeated violation of Section 76.611(a) of the Commission’s rules. On February 8, 10, and 11, 2000, the system operated with visual carrier signals that were not offset from frequencies used by aeronautical radio services in repeated violation of Section 76.612 of the Commission’s Rules.³⁰ Finally, Callais engaged in willful and repeated violations of Section 11.11 of the Commission’s rules by failing to have proper EAS equipment installed .

11. 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.³¹

²¹ Callais reported a CLI of 0.00 for $10 \log I_{3000}$ — no leaks found in the 97 percent of the plant that was examined. The report identified only four leaks over 50 $\mu\text{V}/\text{m}$ that were repaired on August 11, 1998. Callais also reported visual carriers frequencies that were offset from aeronautical frequencies.

²² See 47 C.F.R. §76.615(b)(7).

²³ 47 U.S.C. §503(b).

²⁴ 47 C.F.R. §1.80.

²⁵ 47 C.F.R. §1.80(a)(2).

²⁶ Southern California Broadcasting Company, 6 FCC Rcd 4387, para. 5 (1991).

²⁷ 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.

²⁸ 47 C.F.R. §76.605(a)(12).

²⁹ 47 C.F.R. §76.611(a).

³⁰ 47 C.F.R. §76.612.

³¹ 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, the system violated CLI, and substantial harm occurred in the form of actual interference. Therefore, a substantial increase in the amount for each violation is warranted, equivalent to the maximum for two violations. We believe the appropriate forfeiture for Callais' repeated failure to comply with leakage limits on January 21 and February 8 and 10, 2000, is \$55,000.

12. Similarly, for the above reasons and the fundamental importance of the requirement that cable systems offset carriers from the aeronautical frequencies to minimize the potential to cause harmful interference, a substantial increase in the amount for each violation of the offset requirement is warranted. We believe the appropriate forfeiture for Callais' repeated failure to comply with the frequency offset requirements on February 8, 10, and 11, 2000, is \$60,000.

13. Further, for all the reasons given above and the fact that the repeated failure to complete the annual leakage tests from August 10, 1999, to the present likely contributed to the harmful interference and the other violations, a substantial increase in the amount of forfeiture for the failure to make the leakage tests is warranted. We believe the appropriate forfeiture for Callais' repeated failure to make the annual leakage tests is \$10,000.

14. We, therefore, assess the forfeiture for the signal leakage violations at \$125,000. We recognize that the forfeiture here is the highest ever proposed for cable signal leakage violations. Compare *MediaOne of Metropolitan Detroit, Inc.*, Notice of Apparent Liability, FCC 00-273, 2000 WL 1035951 (F.C.C.) (2000) (NAL for \$55,000 for cable signal leakage violations). The amount of the forfeiture is justified, however, because the totality of the violations here is much more serious. *MediaOne* involved two days of leakage violations, including on that caused harmful interference. Callais' violations occurred on three days and, unlike those in *MediaOne*, are accompanied by almost complete disregard for the rules designed to protect air traffic safety, including failure to offset frequencies and failure to make annual measurements to verify compliance with the basic leakage performance criteria.

15. Finally, we also believe that a forfeiture is warranted for Callais' EAS violation. The base forfeiture amount for failure to have EAS equipment installed or operational is \$8,000. The system was required to install equipment by December 31, 1998.³² Operation of the system without the equipment is a willful violation and it has been repeated on all days the system operated from January 1, 1999, until March 23, 2000. We note, however that Callais had the capability to interrupt audio programming for emergency broadcasts in the event of an emergency. We find no basis for making an adjustment to the \$8,000 amount. Accordingly, the appropriate forfeiture for Callais' willful and repeated failure to comply with EAS equipment requirements is \$8,000.

V. ORDERING CLAUSES

16. 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 Callais Cablevision, Inc., is HEREBY NOTIFIED of its APPARENT LIABILITY FOR MONETARY FORFEITURE in the amount of One Hundred and Thirty-Three Thousand Dollars (\$133,000) for willful or repeated violation of Sections 11.11, 76.605(a)(12), 76.611(a) and 76.612 of the Commission's Rules, 47 C.F.R. §§11.11, 76.605(a)(12), 76.611(a) and 76.612.

³² See 47 C.F.R. §11.11(a).

17. 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 Callais Cablevision, Inc., 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.

18. 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. X12000004"

19. 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.: X12000004.

20. 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.

21. 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, Washington, D.C. 20554.³³

22. IT IS FURTHER ORDERED that a copy of this Notice be sent, by Certified Mail, Signed Receipt Requested, to Callais Cablevision, Inc., P.O. Drawer 788, Golden Meadow, Louisiana 70357 and to P.O. Drawer 550, Larose, Louisiana 70373.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

³³ 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>
February 8, 2000	End of Walnut Street near "Snowball Run" concession stand	133.250	1,068
	Corner of Magnolia and Highway 1		401
	Corner of Jefferson and Cedar		121
	Corner of Nacarri and Gulfview		539
	On Highway 1 just north of Marlana		77
	Last House at the end of Cherry		68
	Corner of Wisteria and Highway 1		166
February 10, 2000	151 Strawberry	133.250	189
	First utility pole on Iberville off Highway 1		207
	344 Shelton		143
	Corner of Jackson and Highway 1		180
	Corner of Melon and Highway 1		279
	Last utility pole at end of Memory		493
	Utility pole number "LS996" at 1687 Highway 1		2295

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: X12000004

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

Callais Cablevision, Inc.
 Licensee or Registrant

LA0166, Grand Isle, LA
 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).