

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

In the Matter of)	EB-00-OR-023
)	
Callais Cablevision, Inc.)	NAL/Acct. No.: X12000004
)	
Grand Isle, Louisiana)	FRN 0004-9424-54
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)	
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FORFEITURE ORDER

Adopted: November 4, 2002

Released: November 6, 2002

By the Commission:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of one hundred thirty-three thousand dollars (\$133,000) against Callais Cablevision, Inc., (“Callais”) for repeated violations of Sections 76.605(a)(12), 76.611(a) and 76.612 of the Commission’s Rules (“Rules”)¹; and willful violation of Section 11.11 of the Rules.² The noted violations all involve important public safety requirements -- excessive cable signal leakage, failure to maintain the required frequency offset in the aviation bands, failure to perform and report the required annual signal leakage tests, and failure to have the required Emergency Alert System (“EAS”) equipment necessary to transmit national emergency messages.

2. On January 19, 2001, the Commission released a *Notice of Apparent Liability for Forfeiture* (“NAL”) against Callais in the amount of \$133,000.³ Callais filed its response to the NAL on March 5, 2001.

II. BACKGROUND

3. The Commission has established cable signal leakage rules to control emissions that could cause interference to aviation frequencies from cable systems. Protecting the aeronautical frequencies⁴

¹47 C.F.R. §§76.605(a)(12), 76.611(a) and 76.612.

²47 C.F.R. §11.11.

³ *Callais Cablevision, Inc.*, 16 FCC Rcd 1359 (2001).

⁴ 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
(continued...)

from harmful interference is of paramount importance.⁵ To this end, the Commission established basic signal leakage standards.⁶ 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 $\mu\text{V}/\text{m}$.⁷ 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 ($10 \log I_{\infty}$) to demonstrate safe levels of signal leakage (a CLI of less than 64),⁸ the results of which must be reported to us.⁹ We also require routine monitoring of the system to detect leaks.¹⁰ Whenever harmful interference occurs, the cable system operator must eliminate it.¹¹ 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 power¹² below the levels specified in Section 76.610 of the Rules.¹³ We also require that the signal carriers of cable systems be offset from the frequencies used by aeronautical services.¹⁴

4. The 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.¹⁵ Cable systems must participate in the EAS.¹⁶ Cable systems with 10,000 or more subscribers were required to install EAS equipment in accordance with Section 11.11 of the Rules by December 31, 1998.¹⁷ Specifically, these cable systems were required to install and operate EAS encoder and EAS decoder equipment. In addition, the equipment must be capable of transmitting audio and video national EAS messages on all channels.¹⁸

5. On January 21, 2000, Federal Aviation Administration ("FAA") personnel made a telephone

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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.

⁵ 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).

⁶ *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).

⁷ 47 C.F.R. §76.605(a)(12).

⁸ 47 C.F.R. §76.611(a).

⁹ 47 C.F.R. §76.615(b)(7).

¹⁰ 47 C.F.R. §76.614.

¹¹ 47 C.F.R. §76.613(b).

¹² 47 C.F.R. §76.613(c).

¹³ 47 C.F.R. §76.610.

¹⁴ 47 C.F.R. §76.612. MO&O, *supra* note 6, at para. 14.

¹⁵ 47 C.F.R. §11.1.

¹⁶ 47 C.F.R. §§11.11 & 11.41.

¹⁷ 47 C.F.R. §11.11.

¹⁸ *Id.*

call to the Commission's New Orleans, Louisiana, Field Office ("New Orleans Office") and reported interference to the operation of the FAA's Remote Communication Air Ground ("RCAG") facility in Grand Isle, Louisiana. The FCC agent who answered the call told the FAA that the characteristics of the interfering signal indicated that its source was signal leakage from a cable television system. On January 24, 2000, FAA personnel again called the New Orleans Office. The FAA reported that, after it contacted Callais, Callais reported fixing a major leak near the RCAG and the interference ceased. Cable leakage monitoring logs supplied by Callais pursuant to Section 76.614 of the Rules¹⁹ indicate that Callais found and repaired several leaks in the general vicinity of the FAA's 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.

6. On February 8 and 10, 2000, an agent from the New Orleans Office inspected Callais's system cable plant to identify leaks and determine compliance with the basic signal leakage criteria. On February 8, 2000, the agent found seven leaks, which ranged from 68 $\mu\text{V}/\text{m}$ to 1,068 $\mu\text{V}/\text{m}$. On February 10, 2000, the agent found seven additional leaks, which ranged from 143 $\mu\text{V}/\text{m}$ to 2,295 $\mu\text{V}/\text{m}$. The agent found leaks in the nine miles (2.7%) of the system he inspected. The agent found that, even assuming there were no leaks in the rest of the system, the CLI exceeded the maximum permissible amount, 64. Additionally, the agent observed that, on February 8 and 10, 2000, the cable system's carrier frequencies were not offset from aeronautical frequencies.

7. On February 11, 2000, the agent inspected the headend of Callais's cable system. During the inspection the agent found that Callais had not offset the cable system's carrier frequencies from aeronautical frequencies. The agent also found that Callais had not installed the following EAS equipment required by Section 11.11 of the Rules: EAS encoder and EAS decoder equipment, and equipment to provide audio and video EAS messages on all channels.

8. On February 11, 2000, the New Orleans Office issued an Order to Cease Operations, pursuant to Section 76.613(c) of the Rules.²⁰ The system resumed normal operation on February 17, 2000, after being brought into compliance.

9. On February 29, 2000, the New Orleans Office issued an Official Notice of Violation ("NOV") citing violations of the frequency offset and EAS equipment requirements. On March 10, 2000, Callais replied to the NOV stating that it had offset the cable system's carrier frequencies and had purchased the required EAS equipment. On March 23, 2000, Callais notified the New Orleans Office that it had received and installed the proper EAS equipment.

10. A review of Commission records, done shortly before the release of the *NAL* on January 19, 2001, indicated that Callais filed its most recent Basic Signal Leakage Performance Report (FCC Form 320) on October 28, 1998, for signal leakage tests performed on August 10, 1998. Section 76.611(a) of the Rules required Callais to perform annual signal leakage tests and to report the results to the Commission. Callais did not file such reports during the years 1999 and 2000.

11. In light of the above violations discovered by the New Orleans Office, on January 19, 2001, the Commission released the referenced *NAL* against Callais in the amount of \$133,000. Callais filed its response to the *NAL* on March 5, 2001, requesting cancellation of the proposed forfeiture.

¹⁹ 47 C.F.R. §76.614.

²⁰ See 47 C.F.R. §76.613(c).

III. DISCUSSION

12. The Commission assessed the proposed forfeiture amount in this case in accordance with Section 503 of the Communications Act of 1934, as amended (“Act”),²¹ Section 1.80 of the Rules,²² 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 Act²³ requires that, in examining Callais’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.²⁴

13. Callais does not dispute the violations alleged by the *NAL*. Callais, however, contends that the proposed monetary forfeiture should be cancelled for the reasons discussed below.

14. First, Callais contends that consumers and salt air corrosion are responsible for many cable signal leakages. Assuming, *arguendo*, that this contention is correct, it does not mitigate Callais’s violations. Cable operators are required to monitor for and repair signal leaks²⁵ regardless of their origin in order to ensure that their systems comply with our cable leakage standards, which serve a critical public safety purpose.

15. Callais suggests that its status as a family-owned “mom and pop” cable operator mitigates the violations. Callais’s status as a family-owned business does not mitigate Callais’s violations even if it considers itself a small business. In acknowledging that the Small Business Regulatory Enforcement Fairness Act of 1996 requires federal agencies to establish policies providing for the reduction of forfeitures imposed on small businesses, we stated that under appropriate circumstances, we may consider ability to pay in determining penalty assessments on small entities.²⁶ Callais has not presented any information indicating that it is unable to pay the proposed forfeiture.

16. Callais sets forth various steps it has taken to correct its violations and prevent their recurrence. These include repairing leaks, using better cable for drops, making leakage checks more frequently than required by the Rules, designating a new person to be responsible for preventing leakage, installing new leakage detection equipment in field service vehicles, obtaining additional training materials for its technical staff, offsetting the system’s carrier frequencies and installing the required EAS equipment. As we stated in *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994), “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.”²⁷

²¹ 47 U.S.C. § 503.

²² 47 C.F.R. § 1.80.

²³ 47 U.S.C. § 503(b).

²⁴ 47 U.S.C. § 503(b)(2)(D).

²⁵ See 47 C.F.R. §§ 76.613(b) and 76.614.

²⁶ *Forfeiture Policy Statement*, 12 FCC Rcd at 17109. See also *Jerry Szoka*, 14 FCC Rcd 9857, 9866 (1999), *recon. denied*, 14 FCC Rcd 20147 (1999); *affirmed*, *Grid Radio and Jerry Szoka v. FCC*, 349 U.S.App.D.C. 365 (D.C. Cir. 2002), *petition for cert. filed*, 70 U.S.L.W. (May 8, 2002).

²⁷ See also *Radio Station KGVL, Inc.*, 42 FCC2d 258, 259 (1973); and *Executive Broadcasting Corp.*, 3 FCC2d 699, 700 (1966).

17. Callais points out that, although it did not have the EAS equipment required by Section 11.11 of our Rules, it did have equipment capable of alerting subscribers about emergencies. In the *NAL*, we noted that Callais had the capability to interrupt audio programming for emergency broadcasts in the event of an emergency but we found it not to be a basis for making an adjustment to the \$8,000 forfeiture amount specified for this violation. Section 11.11 requires Callais to have equipment which performs the following functions: producing a two-tone signal from a storage device, encoding EAS messages, decoding EAS messages and displaying audio and visual messages on all channels. The equipment that Callais possessed could display an audio message but was not capable of performing any of the other required functions. The principal purpose of EAS is to provide the President with the capability of providing immediate communications and information to the general public during periods of national emergency.²⁸ Even if Callais's equipment could properly display both the audio and visual messages on all channels, its equipment could not accomplish this purpose because it was incomplete and, therefore, incapable of receiving EAS messages. Accordingly, we find that Callais's possession of equipment that could display audio only messages does not warrant any reduction from the proposed forfeiture amount.

18. Callais contends that the proposed forfeiture amounts imposed for cable signal leakage (\$55,000), failure to offset the carrier frequency (\$60,000) and failure to perform the required annual leakage tests and report the results (\$10,000) are excessive. Callais does not specifically address the forfeiture amount imposed for the EAS violation (\$8,000).

19. Specifically, Callais argues that we cannot assess a forfeiture for Callais's cable signal leakage and carrier offset violations because there are no specific base amounts for these violations set forth in the *Forfeiture Guidelines*;²⁹ that the proper base forfeiture amount for Callais's failure to perform the required annual leakage tests is \$2,000; that we cannot deviate from the base amounts specified in the *Forfeiture Guidelines* unless we do so through a rulemaking proceeding; and that we cannot assess the forfeiture amounts for each day of the cable signal leakage and carrier offset violations because there was only one "episode" of each of these violations. These arguments lack merit.

20. Even if the *Forfeiture Guidelines* did not establish base forfeiture amounts for cable leakage and carrier offset violations, we could still impose forfeitures for those violations.³⁰ Furthermore, the *Forfeiture Guidelines* do establish base amounts for those violations. Our cable signal leakage and carrier offset rules are designed to protect aeronautical frequencies from interference and, therefore, are rules "relating to safety and distress frequencies."³¹ Thus, \$8,000 is the proper base forfeiture amount for the cable signal leakage and carrier offset violations.³² The proper base amount for Callais's failure to perform the required annual leakage tests and report the results is \$8,000, not \$2,000. This violation led to Callais's CLI violations. Callais, therefore, violated a rule "relating to safety and distress frequencies" for which the base forfeiture amount is \$8,000.

²⁸ See paragraph 4, *supra*.

²⁹ 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4).

³⁰ The *Forfeiture Policy Statement* states that "...any omission of a specific rule violation from the ... [forfeiture guidelines] ... should not signal that the Commission considers any unlisted violation as nonexistent or unimportant." *Forfeiture Policy Statement*, 12 FCC Rcd at 17099. The Commission retains the the discretion, moreover, to depart from the *Forfeiture Policy Statement* and issue forfeitures on a case-by-case basis under its general forfeiture authority contained in Section 503 of the Act. *Id.*

³¹ *Forfeiture Guidelines*, Section I, Basic Amounts for Section 503 Forfeitures.

³² See *MediaOne of Metropolitan Detroit*, 15 FCC Rcd 13937, 13939 (2000) [hereinafter "*MediaOne*"] and *Charter Communications VI, LLC*, 16 FCC Rcd 8485, 8487 (2001).

21. We can deviate from the base amounts specified in the *Forfeiture Guidelines*. The *Forfeiture Guidelines* specifically contemplate upward (as well as downward) adjustments to the base forfeiture amounts.³³ For example, in *MediaOne*, we proposed a forfeiture of \$55,000 for cable signal leakage violations occurring on two dates. The \$55,000 forfeiture proposed in this case is consistent with *MediaOne*. Callais's carrier offset violations are distinct from its cable leakage violations. An additional forfeiture amount of \$60,000 for Callais's carrier offset violations is warranted because those violations significantly increased the likelihood of interference on aeronautical frequencies and, thus, are even more significant than the Callais's cable signal leakage violations. Increasing the forfeiture amount for Callais's failure to perform the required annual leakage tests and report the results from \$8,000 to \$10,000 is warranted because this violation continued over a two year period and, thus, is a "repeated or continuous violation."³⁴ Finally, we are authorized to impose the maximum forfeiture amount of \$27,500 for each day a violation continues regardless of the number of "episodes." See *Media One, supra*, and Section 503(b)(2)(A) of the Act.³⁵

22. Callais also asserts that it is "arbitrary and capricious" for us to apply our CLI standard and other cable leakage rules to cable operators immediately but to certain non-cable Multi-channel Video Programming Distributors ("MVPDs") only after a five year transition period. When we established the five year transition period for certain non-cable MPVDs, we stated that:

We recognize ... immediate compliance with many of our other signal leakage requirements may present hardships to existing MVPDs not previously subject to such rules. We will allow for a five-year transition period from the effective date of these rules to afford non-cable MVPDs time to comply with our signal leakage rules other than Section 76.613. We note that such a transition period is consistent with the time period allotted to cable operators in 1984 to comply with the more stringent signal leakage requirements imposed by the Commission. We disagree with Time Warner that non-cable MVPDs do not need five years to comply with signal leakage rules because they do not face many of the same obstacles cable operators confronted in the past in complying with such rules. We believe that a five-year transition period will provide a reasonable time period for existing non-cable MVPDs to undertake such functions as replacing equipment, upgrading existing wiring, and training personnel to conduct signal leakage measurements. The five-year transition period will apply only to the systems of those non-cable MVPDs that have been substantially built as of January 1, 1998.³⁶

We find that application of our CLI standard and other cable leakage rules to Callais is not arbitrary and capricious.

23. We are, therefore, not persuaded that the proposed forfeiture should be cancelled or that its amount is excessive. The Commission's leakage rules are designed to protect aircraft safety communications from harmful interference. Callais violated most of those rules. The result was harmful

³³ *Forfeiture Guidelines*, Section II, Adjustment Criteria for Section 503 Forfeitures. The upward adjustment criteria are: (1) Egregious misconduct, (2) Ability to pay/relative disincentive, (3) Intentional violation, (4) Substantial harm, (5) Prior violations of any FCC requirements, (6) Substantial economic gain, and (7) Repeated or continuous violation.

³⁴ *Forfeiture Guidelines*, Section II, Adjustment Criteria for Section 503 Forfeitures.

³⁵ 47 U.S.C. § 503(b)(2)(A).

³⁶ *Report and Order and Second Further Notice of Proposed Rulemaking, Telecommunications Services Inside Wiring*, 13 FCC Rcd 3659, 3769-3770 (1997) (footnotes omitted).

interference to FAA communications. This warrants a substantial forfeiture. We find that \$133,000 is the proper forfeiture amount.

IV. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act and Section 1.80(f)(4) of the Rules,³⁷ Callais Cablevision, Inc., IS LIABLE FOR A MONETARY FORFEITURE in the amount of one hundred and thirty-three thousand dollars (\$133,000) for repeated violation of Sections 76.605(a)(12), 76.611(a) and 76.612 of the Rules and willful of Section 11.11 of the Rules.

25. 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.³⁸ 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. X12000004, and FRN 0004-9424-54. 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. 20554.³⁹

26. IT IS FURTHER ORDERED that, a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to Callais Cablevision, Inc., P.O. Drawer 550, Larose, Louisiana 70373, and to its attorney, Bradford D. Carey, Esq., Hardy, Carey & Chautin, LLP, 110 Veterans Blvd., Suite 300, Metairie, LA 70005.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³⁷ 47 C.F.R. § 1.80(f)(4).

³⁸ 47 U.S.C. § 504(a).

³⁹ See 47 C.F.R. § 1.1914.