

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

In the Matter of)
SCI Cable Inc.) File No. EB-11-KC-0007
Owner of Cable Television Systems) NAL/Acct. No. 201132560007
Perry, Kansas and Lecompton, Kansas) FRN 0020384889
PSID # 008262)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: September 14, 2011

Released: September 14, 2011

By the District Director, Kansas City Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (“NAL”), we find that SCI Cable Inc. (“SCI”), owner of cable television systems in Perry, Kansas (“Perry”) and Lecompton, Kansas (“Lecompton”), apparently willfully and repeatedly violated sections 11.35 and 76.1803 of the Commission’s rules (“Rules”)¹ by failing to: (1) install Emergency Alert System (“EAS”) equipment; (2) log the removal of EAS equipment; and (3) file required Annual Basic Signal Leakage Performance Reports (“FCC Form 320s”). We conclude that SCI is apparently liable for a forfeiture in the amount of thirteen thousand dollars (\$13,000).

II. BACKGROUND

2. On September 22, 2010, in response to a complaint, agents from the Enforcement Bureau’s Kansas City Office (“Kansas City Office”) traveled to SCI’s office in Topeka, Kansas, the SCI office covering the Perry and Lecompton systems, and requested to see SCI’s EAS logs. SCI’s manager admitted that it did not have any EAS logs for the Perry and Lecompton systems, and showed the agents a disconnected EAS unit, which he stated that he had removed from service in the fall of 2009. SCI’s manager also admitted during the inspection that SCI did not file its FCC Form 320s for the Perry and Lecompton systems with the Commission for 2009 and 2010 and did not have any records of its signal leakage testing.

3. On October 7, 2010, the Kansas City Office sent a Letter of Inquiry (“LOI”²) to SCI.² In response to a question about which cable systems were affected by SCI’s removal of its EAS, SCI stated that its EAS was removed from service in September 2009³ and that the cable systems in Perry and

¹ 47 C.F.R. §§ 11.35, 76.1803.

² Letter from Robert C. McKinney, District Director, Kansas City Office, South Central Region, Enforcement Bureau, to Kirk Keberlein, SCI Cable, Inc., dated October 7, 2010.

³ Letter from Kirk Keberlein, SCI Cable, Inc., to Robert C. McKinney, District Director, Kansas City Office, South Central Region, Enforcement Bureau, dated October 29, 2010 (“LOI Response”).

Lecompton shared a headend, for which an EAS unit was scheduled to become operational on October 31, 2010.⁴ SCI also stated that the Perry and Lecompton systems operated on aeronautical frequencies.⁵

III. DISCUSSION

4. Section 503(b) of the Communications Act of 1934, as amended (“Act”),⁶ provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. Section 312(f)(1) of the Act defines willful as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁷ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both section 312 and 503(b) of the Act⁸ and the Commission has so interpreted the term in the section 503(b) context.⁹ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹⁰ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹¹

5. Every analog and digital cable system is part of the nationwide EAS network and is categorized as a participating national EAS source unless the station affirmatively requests authority to refrain from participation, and that request is approved by the Commission.¹² Cable systems must comply with EAS requirements on a per headend basis.¹³ The EAS enables the President and state and local governments to provide immediate emergency communications and information to the general public.¹⁴ State and local area plans identify local primary sources responsible for coordinating carriage of common emergency messages from sources such as the National Weather Service or local emergency management

⁴ *LOI Response* at 4.

⁵ *LOI Response* at 2.

⁶ 47 U.S.C. § 503(b).

⁷ 47 U.S.C. § 312(f)(1).

⁸ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., section 503).... As defined ... ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission’s application of those terms ...”).

⁹ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) recon. denied, 7 FCC Rcd 3454 (1992) (“Southern California Broadcasting Co.”).

¹⁰ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) (“Callais Cablevision, Inc.”) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹¹ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” See *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

¹² 47 C.F.R. §§ 11.11, 11.41.

¹³ 47 C.F.R. § 11.11.

¹⁴ 47 C.F.R. §§ 11.1, 11.21.

officials.¹⁵ Required monthly and weekly tests originate from EAS Local or State Primary sources and must be retransmitted by the participating station. As the nation's emergency warning system, the EAS is critical to public safety, and we recognize the vital role that regulatees play in ensuring its success. The Commission takes seriously any violations of the Rules implementing the EAS and expects full compliance from its regulatees.

6. Section 11.35 of the Rules¹⁶ requires all cable systems to ensure that EAS encoders, EAS decoders, and attention signal generating and receiving equipment are installed so that the monitoring and transmitting functions are available during the times the systems are in operation. Section 11.35(b) of the Rules¹⁷ requires cable system operators to maintain a record of when defective EAS equipment is removed and restored to service. On September 22, 2010, agents from the Kansas City Office inspected SCI's office in Topeka and discovered that no EAS logs were available for the Perry and Lecompton systems for the previous two years¹⁸ and that no EAS equipment was installed for the Perry and Lecompton systems. SCI admitted in response to the *LOI* that its EAS equipment was removed from service in September 2009 and stated that new equipment for the Perry and Lecompton systems would be operational on October 31, 2010. Thus, based on the evidence before us, we find that SCI apparently willfully and repeatedly violated section 11.35 of the Rules by failing to install EAS equipment in the Perry and Lecompton cable systems from at least October 1, 2009 until October 31, 2010 and failing to log when its EAS equipment was removed from service.

7. Protecting the aeronautical frequencies from harmful interference is of paramount importance.¹⁹ To this end, the Commission has established cable signal leakage rules to control emissions that could cause cable systems to interfere with aviation frequencies.²⁰ The Commission determined the tolerable levels of unwanted signals on the aeronautical frequencies in two ways. First, leakage at any given point must not exceed 20 μ V/m.²¹ Second, cable systems must meet basic signal leakage performance criteria as a prerequisite for operation on aeronautical frequencies. This is referred to as the system's cumulative leakage index or "CLI." Signal leakage levels that exceed these aforementioned thresholds are considered harmful interference. The Commission requires that each system annually measure its CLI (10

¹⁵ 47 C.F.R. § 11.18. State EAS plans contain guidelines that must be followed by broadcast and cable personnel, emergency officials and National Weather Service personnel to activate the EAS for state and local emergency alerts. The state plans include the EAS header codes and messages to be transmitted by the primary state, local and relay EAS sources.

¹⁶ 47 C.F.R. § 11.35.

¹⁷ 47 C.F.R. § 11.35(b).

¹⁸ See 47 C.F.R. § 76.1711 (requiring cable systems of 1,000 or more subscribers to keep a record of each test and activation of the EAS).

¹⁹ See *Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359 (2001). 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. The international distress and calling frequencies, 121.5 MHz, 156.8 MHz, and 243 MHz, receive heightened protection. See 47 C.F.R. § 76.616. These frequencies are critical for Search and Rescue Operations, including for 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 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).

²⁰ 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, Memorandum Opinion and Order, Docket No. 21006, 101 FCC 2d 117, ¶ 14 (1985).

²¹ 47 C.F.R. § 76.605(a)(12).

log I_{∞}) to demonstrate that any signal leakage is within permissible levels (i.e., a CLI of less than 64),²² the results of which must be reported to Commission.²³ The rules also require cable operators to provide for a program of regular monitoring of their systems to detect leaks.²⁴ The cable system operator must promptly take measures to eliminate any harmful interference it causes,²⁵ and must maintain a log for two years showing the date and location of each leakage source and the date on which the leakage was repaired.²⁶

8. Section 76.1803 of the Rules²⁷ requires cable system operators who provide service in the aeronautical bands to file FCC Form 320 every calendar year, reporting the results of the system's annual signal leakage performance tests required pursuant to section 76.611 of the Rules. In response to the *LOI*, SCI stated that the Perry and Lecompton cable systems provide service in the aeronautical bands.²⁸ As discussed above, SCI admitted on September 22, 2010 that it had not filed the FCC Form 320s for the Perry and Lecompton systems for calendar years 2009 and 2010 and did not have any records of its leakage testing. According to Commission records, SCI has since filed the aforementioned FCC Form 320s. The Commission expects parties to take post-inspection corrective action to come into compliance with the Rules, however, and such action does not nullify or mitigate any prior violations.²⁹ Thus, based on the evidence before us, we find that SCI apparently willfully and repeatedly violated section 76.1803 of the Rules by failing to file the required FCC Form 320s for the Perry and Lecompton systems for calendar years 2009 and 2010.

9. Pursuant to the Commission's *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount for EAS equipment not installed or operational is \$8,000 and for failing to file required forms is \$3,000.³⁰ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, 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.³¹ Our assessment of the proposed forfeiture in this case is particularly influenced by our findings of additional apparent EAS and Form 320 filing violations in two other enforcement actions issued today and involving cable systems owned by SCI.³² These proceedings indicate that SCI may have a systemic non-compliance issue with the Commission's EAS and Form 320 filing rules. Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we therefore conclude that SCI is apparently liable for a \$13,000 forfeiture for failure to install EAS equipment and file required forms.

²² 47 C.F.R. § 76.611(a).

²³ 47 C.F.R. § 76.615(b)(7).

²⁴ 47 C.F.R. § 76.614.

²⁵ 47 C.F.R. § 76.613(b).

²⁶ 47 C.F.R. § 76.1706.

²⁷ 47 C.F.R. § 76.1803.

²⁸ *LOI Response* at 2.

²⁹ See *International Broadcasting Corporation*, Order on Review, 25 FCC Rcd 1538 (2010); *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

³⁰ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) ("Forfeiture Policy Statement"), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

³¹ 47 U.S.C. § 503(b)(2)(E).

³² *SCI Cable, Inc.*, Notice of Apparent Liability for Forfeiture and Order, DA 11-1538 (Enf. Bur. rel. Sept. 14, 2011); *SCI Cable, Inc.*, Notice of Apparent Liability for Forfeiture and Order, DA 11-1540 (Enf. Bur. rel. Sept. 14, 2011).

10. We also direct SCI to submit a statement signed under penalty of perjury by an officer or director of SCI stating that operational EAS equipment has been installed for the Perry and Lecompton cable systems. This statement must be provided to the Kansas City Office at the address listed in paragraph 15 within thirty days of the release date of this *NAL*.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.204, 0.311, 0.314 and 1.80 of the Commission's rules, SCI Cable Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE AND ORDER** in the amount of thirteen thousand dollars (\$13,000) for violations of sections 11.35 and 76.1803 of the Rules.³³

12. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture and Order, SCI Cable Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. **IT IS FURTHER ORDERED** that SCI Cable Inc. **SHALL SUBMIT** a statement as described in paragraph 10 to the Kansas City Office within thirty days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

14. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁸ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. SCI shall send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

15. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Rules. The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Kansas City Office, 520 NE Colbern Road, 2nd Floor, Lee's Summit, Missouri, 64086 and must include the NAL/Acct. No. referenced in the caption. The statement should also be emailed to SCR-Response@fcc.gov.

³³ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 11.35, 76.1803.

⁸ See 47 C.F.R. § 1.1914.

16. 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.

17. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to SCI Cable Inc. at P.O. Box 67235, Topeka, KS 66667.

FEDERAL COMMUNICATIONS COMMISSION

Ronald D. Ramage
District Director
Kansas City Office
South Central Region
Enforcement Bureau