

**Federal Communications Commission**

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

In the Matter of	)	
	)	File No. EB-03-NY-090
Time Warner Cable, Albany Division	)	
Albany, NY	)	NAL/Acct. No. 200432380004
	)	
	)	FRN: 0008 4371 13

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: December 29, 2003**

By the District Director, New York Office, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Time Warner Cable, Albany Division ("Time Warner") has apparently violated Sections 11.61(a)(1)(iii) and 11.61(a)(2)(i)(B) of the Commission's Rules (the "Rules"),<sup>1</sup> by failing to conduct required monthly and weekly tests of the Emergency Alert System ("EAS"). We conclude that Time Warner is apparently liable for a forfeiture in the amount of two thousand dollars (\$2,000).

**II. BACKGROUND**

2. On June 5, 2003, a Commission agent conducted an EAS inspection of Time Warner's headend location at 130 Washington Avenue Extension, Albany, NY 12203. Based upon the agent's inspection of Time Warner's station records, he determined that Time Warner failed to conduct weekly tests of the EAS header and EOM codes from January 5, 2003 to February 22, 2003, from March 23 to April 5, 2003, and from April 27 to May 31, 2003. He also determined that Time Warner failed to conduct required monthly tests of the EAS header codes, Attention Signal, Test Script, and EOM code for the months of January 2003, and March 2003.

**III. DISCUSSION**

3. Section 11.61(a)(1)(iii) of the Rules requires cable systems to conduct required monthly tests of the EAS header codes, Attention Signal, Test Script, and EOM code that conforms to procedures in the EAS Operating Handbook, and Section 11.61(a)(1)(v).<sup>2</sup> Time Warner's station records failed to show that required monthly tests of the EAS header codes, Attention Signal, Test Script, and EOM code were conducted for the months of January 2003 and March 2003.

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<sup>1</sup> 47 C.F.R. §§ 11.61(a)(1)(iii), and 11.61(a)(2)(i)(B).

<sup>2</sup> 47 C.F.R. § 11.61(a)(1)(v).

## Federal Communications Commission

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4. Section 11.61(a)(2)(i)(B) of the Rules requires cable systems to conduct required weekly tests of the EAS header and EOM codes at least once a week at random days and times. Time Warner's station records failed to show that required weekly tests of the EAS header and EOM codes were conducted from January 5, 2003 to February 22, 2003, from March 23 to April 5, 2003, and from April 27 to May 31, 2003.

5. Based on the evidence before us, we find that, Time Warner willfully<sup>3</sup> and repeatedly<sup>4</sup> violated Sections 11.61(a)(1)(iii) and 11.61(a)(2)(i)(B) of the Rules by failing to conduct required monthly tests of the EAS header codes, Attention Signal, Test Script, and EOM code for the months of January 2003 and March 2003, and by failing to conduct required weekly tests of the EAS header and EOM codes from January 5, 2003 to February 22, 2003, from March 23 to April 5, 2003, and from April 27 to May 31, 2003.

6. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*"),<sup>5</sup> sets the base forfeiture amount for failure to make required measurements or conduct required monitoring at \$2,000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended,<sup>6</sup> ("Act") which include 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. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a two thousand dollar (\$2,000) monetary forfeiture is warranted.

### IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>7</sup> and Sections 0.111, 0.311 and 1.80 of the Rules<sup>8</sup>, Time Warner is hereby NOTIFIED of their APPARENT LIABILITY FOR A FORFEITURE in the amount of two thousand dollars (\$2,000) for willful and repeated violations of Sections 11.61(a)(1)(iii) and 11.61(a)(2)(i)(B) of the Rules.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Time Warner SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

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<sup>3</sup> Section 312(f)(1) of the Act, 47 U.S.C. 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>4</sup> Section 312(f)(2), which also applies to Section 503(b), provides: [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.

<sup>5</sup>47 C.F.R. § 1.80.

<sup>6</sup>47 U.S.C. § 503(b)(2)(D).

<sup>7</sup> 47 U.S.C. § 503(b)

<sup>8</sup>47 C.F.R. §§ 0.111, and 0.311.

## Federal Communications Commission

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9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200432380004 and FRN: 0008 4371 13.

10. Any response to this NAL must be mailed to Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Washington, D.C. 20554, and **MUST INCLUDE THE NAL/Acct. No. 200432380004.**

11. 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.

12. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>9</sup>

13. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Spectrum Enforcement Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

14. **IT IS FURTHER ORDERED THAT** a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested, to Time Warner Cable, Albany Division, 130 Washington Avenue Extension, Albany, NY 12203.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel  
District Director  
New York Office

Attachment A – FCC List of Small Entities, October 2002

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<sup>9</sup> See 47 C.F.R. § 1.1914.