

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

In the Matter of)	
)	
Mallard Cablevision, LLC)	File Number EB-03-DV-137
Operator of Cable Television System)	
Community Unit No. WY0087)	NAL/Acct. No.200432800002
Physical ID No. 004758)	
Pinedale, Wyoming)	FRN 0009072752

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: May 25, 2004

By the Denver Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Mallard Cablevision, LLC ("Mallard"),¹ operator of the cable television system in Pinedale, Wyoming, apparently willfully and repeatedly violated Sections 76.605(a)(12) and 76.611(a)(1) of the Commission's Rules ("Rules")² by operating a cable system in violation of cable signal leakage standards. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),³ that Mallard is apparently liable for a forfeiture in the amount of eight thousand dollars (\$8,000).

II. BACKGROUND

2. The above-captioned system has a history of non-compliance with the Commission's cable leakage standards. On July 20, 2001, a Notice of Violation ("NOV") was issued against the system for violations of the basic signal leakage standards found in Section 76.605(a)(12) of the Rules.⁴ On July 18,

¹ According to Commission records, Mallard has transferred some licenses through Mallard, Debtor-in-Possession, to L.B. Cable, LLC. *See* File Nos. CAR-20030618AH-08 and CAR-20030618AI-08, granted July 2, 2003; File Nos. CAR-20031113AF-08 and CAR-20031113AH-08, granted December 31, 2003. The Commission records for Community Unit No. WY0087, however, indicate that Mallard Cablevision, LLC, is the operator of the cable system serving that Community Unit.

² 47 C.F.R. §§ 76.605(a)(12) and 76.611(a)(1).

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. §§ 76.605(a)(12). The standards found in this section limit basic signal leakage in the frequency band from 54 MHz up to and including 216 MHz to 20 µV/m at a distance of 3 meters.

2002, a second NOV was issued against the system for violations of the same rule section. In October, 2002, the Sheriff's Department of Sublette County, the county served by the Mallard system, contacted the Commission's Denver Office with a detailed complaint listing nineteen places in the cable system where law enforcement officials encountered interference to their communications because of alleged cable signal leakage. On October 15, 2002, the Denver Office sent correspondence to Mallard detailing

the complaint placed by the Sheriff's Department and requested a status report from Mallard. Mallard failed to comply with the status report request in a timely manner but did correct the leakage problem that was interfering with the Sheriff's Department's communications by November 18, 2002.

3. On June 8, 2003, an agent from the Denver Office inspected a portion of Mallard's cable system serving Pinedale, Wyoming, to identify leaks and determine compliance with the Commission's basic signal leakage criteria. The agent identified and measured one leak and based on the measurement of this single leak,⁵ the agent calculated the system's Cumulative Leakage Index ("CLI") at a value of 72.7, exceeding the allowable cumulative signal leakage performance criteria of 64.⁶ (See Attachment B)

4. Because of this leak, the agent contacted Mallard cable technicians on June 8, 2003, and verbally ordered Mallard to cease operation on aeronautical band frequencies or alternatively, reduce amplitude of all signals on these frequencies until the leaks were repaired and the system complied with the basic signal leakage criteria.⁷ The Denver Office followed the oral order with a written *Order to Cease Operations*, delivered by facsimile on June 9, 2003.⁸ In accordance with the *Order to Cease Operations*, Mallard was required to complete an inspection of the system's cable plant, make the necessary repairs to bring the system into compliance, and submit a report of their findings. On June 10, 2003, Mallard responded to the *Order to Cease Operations* indicating that over eighteen additional signal leaks were reported that exceeded the basic signal leakage criteria.⁹ Two of the leaks measured were of such magnitude that each leak, taken alone, would cause the system to exceed the allowable cumulative

⁵ The leak was measured on the frequency 121.2625 MHz, at 4321 microvolts per meter (" $\mu\text{V}/\text{m}$ ").

⁶ The leak was measured on the frequency 121.2625 MHz, at 4321 microvolts per meter (" $\mu\text{V}/\text{m}$ "). A maximum CLI of 64 is the basic signal leakage performance criteria of Section 76.611(a)(1) of the Rules. Leakage that exceeds this level is deemed to pose a serious threat to air safety communications. The calculated CLI included only leaks greater than 50 $\mu\text{V}/\text{m}$.

⁷ Mallard was ordered to cease operations on the aeronautical band frequencies or reduce amplitude of all signals on these frequencies so that the power level did not exceed 10^{-4} watts (38.75 dBmV) across a 25 kHz bandwidth in any 160 microsecond period. Once Mallard complied with the verbal shut down order for all aeronautical band frequencies on June 8, 2003, the agent identified and measured seven leaks that exceeded the basic signal leakage criteria on a non-aeronautical band frequency of 157.2625 MHz. (See Attachment B.)

⁸ See 47 C.F.R. 76.613(c). Mallard complied with the *Order to Cease Operations*.

⁹ June 10, 2003, letter from Mallard, ("Response"). These leaks ranged from 30 $\mu\text{V}/\text{m}$ to 2900 $\mu\text{V}/\text{m}$.

signal leakage performance criteria of 64.¹⁰

III. DISCUSSION

5. Section 503(b) of the Act 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. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.¹¹ The term "repeated" means the commission or omission of such act more than once or for more than one day.¹²

6. Section 76.611(a)(1) of the Rules requires a cable system to limit its CLI to a value at or below 64.¹³ Section 76.605(a)(12) of the Rules requires cable operators to limit basic signal leakage in the frequency band from 54 MHz up to and including 216 MHz to 20 $\mu\text{V}/\text{m}$ at a distance of 3 meters.¹⁴ On June 8, 2003, Mallard exceeded the limits for both basic signal leakage and cumulative signal leakage at one location on its system in Pinedale, Wyoming, by operating with a CLI value of 72.7. In response to an *Order to Cease Operations*, Mallard conducted a complete inspection of its system and reported to the Commission's Denver Office that over eighteen additional signal leaks existed that exceeded the basic signal leakage criteria. In addition, two of the leaks measured were of such magnitude that each leak, taken alone, would cause the system to exceed the allowable cumulative signal leakage performance criteria of 64. As detailed above, the Mallard cable system in Pinedale, Wyoming received NOV's from the Commission's Denver Office concerning cable signal leakage in 2001 and 2002 and has been the subject of interference complaints due to excessive signal leakage from the local Sheriff's Department. Mallard maintains a signal leakage log which identifies signal leaks and repairs, and so is knowledgeable about signal leakage requirements. Therefore, the notice received by Mallard concerning the continued

¹⁰ According to Mallard's Response, the leaks measured 1670 $\mu\text{V}/\text{m}$ and 2900 $\mu\text{V}/\text{m}$ respectively. It should be noted that one leak at 1584 $\mu\text{V}/\text{m}$ would cause the cable system to fail CLI.

¹¹ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies equally 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).

¹² 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."

¹³ 47 C.F.R. § 76.611(a)(1).

¹⁴ 47 C.F.R. § 76.605(a)(12).

non-compliance of its cable system, along with the fact that Mallard has knowledge of the signal leakage requirements, makes the violation willful. Furthermore, it appears Mallard operated with excessive signal leakage and failed CLI on more than one day; thus it is repeated.

7. Based on the evidence before us, we find that on June 8, 2003, and June 9, 2003, Mallard willfully and repeatedly violated Sections 76.605(a)(12) and 76.611(a)(1) of the Rules by operating a cable system in violation of signal leakage standards.

8. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("*Forfeiture Policy Statement*"), and Section 1.80 of the Rules, the base forfeiture amount for violating rules relating to distress and safety frequencies is \$8,000.¹⁵ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.¹⁶ Applying the *Forfeiture Policy Statement* and the statutory factors, an \$8,000 forfeiture is warranted.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Mallard Cablevision, LLC, is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of eight thousand dollars (\$8,000) for violations of Sections 76.605(a)(12) and 76.611(a)(1) of the Rules.¹⁷

10. 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, Mallard Cablevision, LLC, shall pay the full amount of the proposed forfeiture or shall file a written statement seeking reduction or cancellation of the proposed forfeiture.

11. 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 must include the FCC Registration Number (FRN) and the NAL/Acct. No. referenced in the caption.

¹⁵ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

¹⁶ 47 U.S.C. § 503(b)(2)(D).

¹⁷ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80, 76.605(a)(12) and 76.611(a)(1).

12. The response, if any, must be mailed to the Denver Office, Western Region, Enforcement Bureau, Federal Communications Commission, 215 S. Wadsworth Blvd., Suite 303, Lakewood, CO, 80226, and must include the NAL/Acct. No. referenced in the caption.

13. 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.

14. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁸

15. 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, 445 12th Street, S.W., Washington, DC 20554. 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.

16. IT IS FURTHER ORDERED THAT copies of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Mallard Cablevision, LLC, 3281 Racquet Club Drive, Suite B, Traverse City, MI 83276, and to LB Cable, LLC, c/o J. Feeney Associates, Inc., 17 South Franklin Turnpike, Ramsey, NJ, 07446.

FEDERAL COMMUNICATIONS COMMISSION

Nikki P. Shears

¹⁸ See 47 C.F.R. § 1.1914.

District Director
Denver Office, Western Region
Enforcement Bureau

Attachments

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