

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

In the Matter of
St. George Cable, Inc.
St. George Island, Florida
File No.: EB-11-TP-0102
NAL/Acct. No.: 201232700008
FRN: 0021185574
Community Unit ID: FL1401
PSID: 021652

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: September 6, 2012

Released: September 6, 2012

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that St. George Cable, Inc. (St. George), operator of a cable television system in St. George Island, Florida, apparently willfully and repeatedly failed to respond to a Bureau order requiring a written statement of compliance relating to its cable system and apparently willfully and repeatedly violated Sections 11.35(a), 76.605(a)(12), 76.611(a)(1), 76.613(c), and 76.1801 of the Commission's rules (Rules).1 In particular, St. George failed to (1) install and maintain operational Emergency Alert System (EAS) equipment, (2) operate its cable system within required signal leakage limits, (3) immediately suspend operations as directed by a Bureau order and resume operations only with written authorization, and (4) register its cable system with the Commission. We conclude that St. George is apparently liable for a forfeiture in the amount of two hundred thirty-six thousand five hundred dollars (\$236,500). In addition, we direct St. George to submit, no later than thirty (30) calendar days from the release date of this NAL, a statement signed under penalty of perjury that it is currently in compliance with the Commission's EAS and cable signal leakage rules.

II. BACKGROUND

A. Cable Signal Leakage

2. The Commission has established cable signal leakage rules to control emissions that could cause cable systems to interfere with aviation frequencies.2 The signal leakage levels that exceed the Commission's defined thresholds are considered harmful interference. Protecting the aeronautical

1 See 47 C.F.R. §§ 11.35(a), 76.605(a)(12), 76.611(a)(1), 76.613(c), 76.1801.

2 See 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, para. 14 (1985).

frequencies from harmful interference is of paramount importance.³ To this end, the Commission has determined the tolerable levels of unwanted signals on the aeronautical frequencies in two ways. First, pursuant to Section 76.605(a)(12) of the Rules, signal leakage at any given point in the cable system must not exceed 20 microvolts per meter ($\mu\text{V}/\text{m}$).⁴ Second, Section 76.611(a)(1) of the Rules states that no cable television system shall provide service in the aeronautical bands unless the system's Cumulative Leakage Index (CLI) complies with the limits established in the Rules (*i.e.*, a CLI of less than or equal to 64).⁵ The Commission requires that each cable system annually measure and report its CLI to demonstrate safe levels of signal leakage.⁶

3. Furthermore, in the event that harmful interference cannot be promptly eliminated by the application of suitable techniques, Section 76.613(c) of the Rules states that "operation of the offending system or elements shall immediately be suspended upon notification by the District Director . . . of the Commission's local field office, and shall not be resumed until the interference has been eliminated to the satisfaction of the District Director."⁷

4. On September 7, 2011, agents from the Tampa Office of the Commission's Enforcement Bureau (Tampa Office) conducted an inspection of the St. George Island cable system. The agents observed thirty-three distinct signals on aeronautical frequencies emanating from the St. George Island cable system, otherwise known as "leaks." Specifically, twenty-two leaks on the frequency 121.2625 MHz measured over 100 $\mu\text{V}/\text{m}$ at a distance of at least three meters, with the highest leak measuring 6,627 $\mu\text{V}/\text{m}$. The CLI for the system was calculated to be 86.97, an amount in excess of the CLI limit.⁸

5. On September 9, 2011, the District Director of the Tampa Office issued an *Order to Cease Operations (Cessation Order)* to St. George.⁹ The *Cessation Order* notified St. George that its system had excessive signal leakage and ordered it to cease all cable operations until the excessive signal leakage was eliminated.¹⁰ The *Cessation Order* also stated that St. George could "request authority to conduct short tests to evaluate the effectiveness of remedial measures or to calculate the CLI" and "not resume normal operation on these frequencies without written approval from [the Tampa Office]."¹¹

³ The "aeronautical bands" are 108–137 MHz and 225–400 MHz. These frequencies encompass both radio navigation 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 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; 47 C.F.R. §§ 87.193–87.199. Harmful interference includes any interference that "endangers the functioning of a radio navigation service or of other safety services." *See* 47 C.F.R. §§ 2.1, 76.613(a).

⁴ *See* 47 C.F.R. § 76.605(a)(12). This limit applies to measurements at three meters and for leakage on frequencies over 54 MHz up to and including 216 MHz.

⁵ *See* 47 C.F.R. § 76.611(a)(1).

⁶ *Id.*

⁷ 47 C.F.R. § 76.613(c).

⁸ Using the formula provided in Section 76.611(a)(1) of the Rules, the calculated CLI must be equal to or less than 64. *See* 47 C.F.R. § 76.611(a)(1).

⁹ *St. George Cable, Inc.*, Order to Cease Operations (Enf. Bur. Sept. 9, 2011) (on file in EB-11-TP-0065).

¹⁰ *Id.*

¹¹ *Id.*

Agents from the Tampa Office hand-delivered and explained the *Cessation Order* to St. George on September 9, 2011. St. George's President stated to the agents that his company would adhere to the terms of the *Cessation Order*. St. George, however, never contacted the Tampa Office to obtain authority to conduct testing on the effectiveness of its repair efforts or to resume normal operations. To date, the Tampa Office has not issued written approval for St. George to resume normal operations.¹²

6. On September 10, 21, and 22, 2011, agents from the Tampa Office re-inspected the St. George Island cable system, found the cable system in operation, and observed numerous leaks above 20 $\mu\text{V}/\text{m}$, many of which exceeded 100 $\mu\text{V}/\text{m}$ at three meters. Specifically, on September 10 and 22, 2011, the CLI for the system was calculated to be 76.87 and 70.89, respectively. On September 23, 2011, agents from the Tampa Office verbally warned St. George about the system's continued operation with excessive signal leakage and its failure to comply with the *Cessation Order*. The agents again directed St. George to cease operations immediately until the excessive leakage could be resolved.

7. On October 12, 2011, and again on March 19, 2012, agents from the Tampa Office inspected the St. George Island cable system, found the cable system to be in operation, and observed numerous leaks above 100 $\mu\text{V}/\text{m}$. On October 12, 2011, ten leaks measured above 100 $\mu\text{V}/\text{m}$ at three meters and the CLI for the system was calculated to be 65. Although the system's CLI based on observed leaks did not exceed the CLI limit on March 19, 2012, five leaks measured above 200 $\mu\text{V}/\text{m}$ at three meters.

B. Emergency Alert System

8. Every analog and digital cable system is required to participate in the nationwide EAS network.¹³ The EAS enables the President and state and local governments to provide immediate 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 the sources such as the National Weather Service or local emergency management officials.¹⁵ Required monthly and weekly tests originate from EAS Local or State Primary sources and must be retransmitted by the participating station. Section 11.35 of the Rules requires all EAS participants 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.¹⁶ As the nation's emergency warning system, the EAS is critical to public safety, and we recognize the vital role that cable systems play in ensuring its success. The Commission takes seriously any violations of the Rules implementing the EAS and expects full compliance from its regulatees.

¹² See *infra* para. 26 (requiring certification of compliance).

¹³ 47 C.F.R. §§ 11.11, 11.41.

¹⁴ 47 C.F.R. §§ 11.1, 11.21.

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. 47 C.F.R. § 11.21.

¹⁶ 47 C.F.R. § 11.35.

9. On August 10, 2011, the Commission received a complaint from a consumer alleging that St. George did not have EAS equipment installed.¹⁷ On September 9, 2011, agents from the Tampa Office asked to inspect St. George's EAS equipment and logs. After St. George admitted that it had not yet installed its purchased EAS equipment, the agents verbally warned St. George about its continued non-compliance with the EAS requirements.¹⁸ On September 23, 2011, agents from the Tampa Office returned to inspect the system's EAS equipment and confirmed that St. George still had not installed its purchased EAS equipment.

C. Cable System Registration

10. Section 76.1801 of the Rules requires cable operators to submit a registration statement with the Commission on FCC Form 322.¹⁹ "A system community unit shall be authorized to commence operation only after filing with the Commission [certain] information on FCC Form 322."²⁰

11. On September 9, 2011, after St. George admitted that it had not registered its system with the Commission on an FCC Form 322, and consequently had never been assigned a community unit identification (CUID) or physical system identification (PSID) number, agents from the Tampa Office verbally warned St. George about its need to do so. On September 23, 2011, the agents reiterated this warning after St. George again admitted that it had not yet filed the form. According to Commission records, St. George submitted a Form 322 on December 16, 2011.

D. Prior NAL and Certification Requirement

12. **Prior NAL.** St. George has a prior history of non-compliance with the cable signal leakage, EAS, and cable system registration requirements at issue here. On September 30, 2011, the Bureau issued a *Notice of Apparent Liability for Forfeiture and Order (St. George Cable First NAL)* to St. George for its apparent willful and repeated violations of Sections 11.35(a), 76.605(a)(12), 76.611(a), and 76.1801 of the Rules.²¹ Specifically, on January 11 and 13, 2011, agents from the Tampa Office observed fourteen leaks that exceeded 100 $\mu\text{V}/\text{m}$ at 3 meters in the system.²² On both dates, the CLI for the St. George Island cable system was calculated to be 64.88, an amount in excess of the acceptable limit.²³ In addition, as of January 14, 2011, agents from the Tampa Office observed that St. George had never

¹⁷ See Complaint No. 11-C00323431-1, complaint from consumer memorialized on Form 2000D on August 10, 2011 (on file in EB-11-TP-0065).

¹⁸ The agents found no record of any waivers of EAS requirements being granted to St. George. On September 30, 2011, St. George faxed a copy of an invoice for EAS equipment to the Tampa Office. The invoice showed that St. George had ordered its EAS equipment on January 24, 2011. The cover memo accompanying the invoice stated that St. George did not know the exact date the EAS equipment had been received and that shipments normally arrive within 12-15 days of order placement. The cover memo did not have any statements regarding St. George's compliance with EAS requirements.

¹⁹ 47 C.F.R. § 76.1801.

²⁰ *Id.*

²¹ See *St. George Cable, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 13520, 13520-13521 (Enf. Bur. 2011).

²² *Id.*

²³ On February 28, 2011, St. George informed the Tampa Office that it had repaired all of the leaks found in the January inspection and brought the system's CLI into compliance. See *St. George Cable First NAL*, 26 FCC Rcd at 13521.

installed EAS equipment for its system.²⁴ Further, agents from the Tampa Office confirmed that, as of September 23, 2011, St. George had never registered its system on a Form 322.²⁵ St. George did not file a response to the *St. George Cable First NAL* and a *Forfeiture Order* affirming the proposed \$25,000 forfeiture was subsequently issued.²⁶ St. George also did not submit the required certification statement imposed by the *St. George Cable First NAL* and, as discussed *infra*, we address its failure to respond to a Bureau order in this proceeding.

13. **Certification Requirement.** In the *St. George Cable First NAL*, the Bureau ordered St. George to “submit a statement signed under penalty of perjury by an officer or director of St. George stating that: (1) it has installed operational EAS equipment for the St. George Island system in compliance with section 11.35 of the Rules; and (2) it has submitted a Form 322 for the St. George Island system in compliance with section 76.1801 of the Rules” (Certification of Compliance).²⁷ St. George was required to submit the Certification of Compliance to the Bureau no later than October 30, 2011.²⁸ St. George still has not responded to the Bureau’s order to submit its Certification of Compliance.

III. DISCUSSION

14. Section 503(b) of the Communications Act of 1934, as amended (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.²⁹ 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.³⁰ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,³¹ and the Commission has so interpreted the term in the Section 503(b) context.³² The Commission may also

²⁴ *St. George Cable First NAL*, 26 FCC Rcd at 13522.

²⁵ *Id.*, 26 FCC Rcd at 13523.

²⁶ *St. George Cable, Inc.*, Forfeiture Order, 26 FCC Rcd 16027 (Enf. Bur. 2011) (*Forfeiture Order*) (*forfeiture not paid*).

²⁷ *St. George Cable First NAL*, 26 FCC Rcd at 13524.

²⁸ *Id.*

²⁹ 47 U.S.C. § 503(b).

³⁰ 47 U.S.C. § 312(f)(1).

³¹ 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”).

³² See, e.g., *Application for Review of S. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

assess a forfeiture for violations that are merely repeated, and not willful.³³ The term “repeated” means the commission or omission of such act more than once or for more than one day.³⁴

A. Cable Signal Leakage Violations

1. Failure to Comply with Cable Signal Leakage Limits

15. As discussed above, St. George failed to comply with the Commission’s cable signal leakage limits and its system exceeded the CLI limit on at least four occasions. On September 7, 2011, the St. George system CLI was calculated to be 86.97; on September 10, 2011, the system CLI was calculated to be 76.87; on September 22, 2011, the system CLI was calculated to be 70.89; and on October 12, 2011, the system CLI was calculated to be 65. On March 19, 2012, while the system CLI did not exceed 64, the agents observed the system in operation with five leaks measured above 200 $\mu\text{V}/\text{m}$ at three meters. Thus, based on the evidence before us, we find that St. George apparently willfully and repeatedly violated Sections 76.605(a)(12) and 76.611(a)(1) of the Rules by operating the St. George Island cable system with excessive signal leakage.

2. Failure to Suspend Operations upon Notification by Bureau and Failure to Obtain Bureau Approval Prior to Resuming Normal Operations

16. After having observed the St. George Island cable system’s excessive cable signal leakage, on September 9, 2011, agents from the Tampa Office hand-delivered and orally explained the *Cessation Order* to St. George. The *Cessation Order* (1) notified St. George that its system’s leaks exceeded the CLI limit, (2) directed St. George to cease cable system operations immediately, and (3) informed St. George that it must not resume operations without written approval from the Tampa Office and until the harmful interference caused by the excessive leaks was eliminated.³⁵ Despite acknowledging receipt of and stating to the Tampa Office agents that it would comply with the *Cessation Order*, St. George continued to operate its cable system without written approval from the Tampa Office and with signal leakage in excess of the CLI limit on September 10 and 22, 2011. On September 23, 2011, agents from the Tampa Office warned St. George that it was in violation of the *Cessation Order* and that it must cease operations immediately and not resume operations until its system was in compliance with the CLI limits. However, on October 12, 2011, agents from the Tampa Office again observed the St. George Island system in operation without written approval from the Tampa Office and with signal leakage in excess of the CLI limit. Thus, based on the evidence before us, we find St. George apparently willfully and repeatedly violated Section 76.613(c) of the Rules by failing to cease operations until the interference had been resolved, as directed by the District Director of the Tampa Office, and operating its system without the requisite approval by the District Director.

³³ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc. NAL*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

³⁴ 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 *Callais Cablevision, Inc. NAL*, 16 FCC Rcd at 1362.

³⁵ See *supra* note 9.

B. Failure to Install and Maintain Operational Emergency Alert System Equipment

17. As described above, St. George is an EAS participant and is required to install and maintain operational EAS equipment.³⁶ On September 9 and 23, 2011, agents from the Tampa Office observed that St. George did not have any EAS equipment installed for the St. George Island cable system when the system was in operation. St. George also admitted that although EAS equipment was purchased on January 24, 2011, it was not installed or operational as of September 23, 2011. Thus, based on the evidence before us, we find that St. George apparently willfully and repeatedly violated Section 11.35 of the Rules by failing to install and maintain operational EAS equipment for its cable system.

C. Failure to File Registration Statement and Failure to Respond to Bureau Order to Submit Certification of Compliance

18. In the *St. George Cable First NAL*, the Bureau ordered St. George to submit a Certification of Compliance stating that it had installed operational EAS equipment and submitted a Form 322 as required by Section 76.1801 of the Rules,³⁷ no later than October 30, 2011.³⁸

19. St. George did not file the Form 322 with the Commission by October 30, 2011. In fact, St. George failed to submit the Form 322 until December 16, 2011. Thus, based on the evidence before us, we find that St. George apparently willfully and repeatedly violated Section 76.1801 of the Rules by failing to submit a registration statement to the Commission on FCC Form 322 before it commenced operations. St. George still has not submitted the Certification of Compliance. Accordingly, we also find that St. George apparently willfully and repeatedly violated the terms of a Bureau order.

D. Proposed Forfeiture Amount

20. 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; for violation of rules relating to distress and safety frequencies is \$8,000; for failing to respond to a Commission inquiry is \$4,000; and for failing to file required forms is \$3,000.³⁹ Although there is no base forfeiture for continued operation in violation of a cessation order, "[f]ailure to discontinue operations when instructed to do so by Commission staff, upon demonstration of a hazard to air navigation, is a serious offense and demands the maximum penalty."⁴⁰ Commission precedent has established that cable signal leakage in the aeronautical bands constitutes harmful interference to distress and safety frequencies.⁴¹ Accordingly, we conclude the forfeiture in this case for failing to cease operations when instructed to do so should be the statutory maximum, which is \$37,500.⁴² In assessing the monetary forfeiture amount, we must also take

³⁶ See 47 C.F.R. § 11.35.

³⁷ 47 C.F.R. § 76.1801.

³⁸ *St. George Cable First NAL*, 26 FCC Rcd at 13524.

³⁹ *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*), recons. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

⁴⁰ See, e.g. *Charter Commc'ns VI, LLC*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 8485 (Enf. Bur. 2001) (*Charter Commc'ns NAL*).

⁴¹ See 47 C.F.R. §§ 2.1, 76.613(a).

⁴² 47 C.F.R. § 1.80(b)(1).

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.⁴³ St. George has a history of failing to comply with the rules at issue today, which demonstrates a complete disregard for the Commission's authority and requirements, warranting significant upward adjustments of the base forfeiture amounts.

21. **Cable Signal Leakage.** On September 7, 2011, St. George operated its cable system with signal leakage in excess of the CLI limit. On September 9, 2011, and again on September 23, 2011, St. George was notified that its system's cable signal leakage exceeded the CLI limit and posed a safety hazard to air navigation traffic. In the *Cessation Order* issued on September 9, 2011, the District Director of the Tampa Office ordered St. George to cease operations until the harmful interference was resolved and to obtain written authority prior to resuming normal operations. Agents from the Tampa Office reiterated the contents of the *Cessation Order* to St. George on September 23, 2011. Nevertheless, St. George continued to operate its cable system without authorization and with signal leakage in excess of the CLI limit on September 10, September 22, and October 12, 2011. Moreover, the Bureau had previously found that St. George operated its cable system with signal leakage in excess of the CLI limit on January 11 and 13, 2011⁴⁴ and imposed an \$8,000 forfeiture for the violations.⁴⁵ We conclude St. George's actions were egregious—given the potential public safety hazard, its blatant disregard for Commission authority, and a demonstrated pattern of failing to maintain its cable system—warranting significant upward adjustments to the base forfeiture. Section 1.80(b)(1) of the Rules limits the amount of forfeiture the Commission may assess against a cable television operator to \$37,500 for each violation.⁴⁶ Given the totality of the circumstances, we find St. George apparently liable for a total forfeiture equivalent to the maximum for four violations, or \$150,000, for operating its cable system with excessive cable signal leakage.⁴⁷ Further, for its apparent willful and repeated failure to comply with the Bureau's *Cessation Order*, we find that a total forfeiture in the amount of \$37,500 is warranted.⁴⁸

⁴³ 47 U.S.C. § 503(b)(2)(E).

⁴⁴ See *St. George Cable First NAL*, 26 FCC Rcd at 13520-13521. On January 20, 2011, the Tampa Office issued an order directing St. George to cease operations on aeronautical band frequencies. See Letter from Ralph Barlow, District Director, Tampa Office, to Charles Sumner, Owner of St. George Cable, Inc. (rel. Jan. 20, 2011) (on file in EB-10-TP-0065). On February 28, 2011, St. George informed the Tampa Office that it had repaired all of the leaks found in the January inspection and brought the system's CLI into compliance.

⁴⁵ We are not using the issuance of the prior NAL to St. George's prejudice as prohibited by Section 504(c) of the Act, 47 U.S.C. § 504(c), but rather are appropriately considering "the underlying facts of a prior violation that shows a pattern of non-complaint behavior." See 47 U.S.C. § 504(c) (issuance of NAL or forfeiture may not be used in any other proceeding "to the prejudice of the person to whom such notice was issued, unless (i) the forfeiture has been paid, or (ii) a court of competent jurisdiction has ordered payment of such forfeiture, and such order has become final"); *Forfeiture Policy Statement*, 12 FCC Rcd at 17103, para. 34 ("[U]sing the underlying facts of a prior violation that shows a pattern of non-compliant behavior against a licensee in a subsequent renewal, forfeiture, transfer, or other proceeding does not cause the prejudice that Congress sought to avoid in Section 504(c)."); see also *Clean Credit, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 12881 (2010) at para. 7 (using the underlying facts from a prior NAL to support an upward adjustment in the proposed forfeiture amount).

⁴⁶ 47 C.F.R. § 1.80(b)(1).

⁴⁷ See *Callais Cablevision Inc. NAL*, 16 FCC Rcd 1359 (imposing proposed forfeiture equivalent to twice the statutory maximum for exceeding CLI on two days and causing actual interference to the Federal Aviation Administration (FAA)); *MediaOne of Metro. Detroit*, Notice of Apparent Liability, 15 FCC Rcd 13937 (2000) (proposing a forfeiture equivalent to twice the statutory maximum for exceeding CLI on one day, causing actual (continued....))

22. **EAS.** As of September 23, 2011, St. George's cable system was operating without installed EAS equipment. Moreover, the Bureau had previously concluded in the *St. George Cable First NAL* that, as of January 14, 2011, St. George had never installed EAS equipment for its cable system, and imposed a \$12,500 forfeiture.⁴⁹ The proposed forfeiture included an upward adjustment of \$4,500, reflecting St. George's failure to install EAS since 2002, when it was first required by the Commission to do so.⁵⁰ St. George's history of non-compliance and continued failure to install operational EAS equipment, despite being repeatedly warned to do so, warrants the statutory maximum forfeiture for the EAS violation. Given the totality of the circumstances, we find St. George apparently liable for a total forfeiture of \$37,500.

23. **Registration.** The Bureau directed St. George to submit a Form 322 on September 9 and 23, 2011, and in the *St. George Cable First NAL*. St. George, however, did not submit the Form 322 until December 16, 2011, almost three months after its third warning and more than a month and a half after it was required to certify to the Bureau that it had done so. The Bureau concluded in the *St. George Cable First NAL* that St. George failed to file a Form 322 for more than a year after being instructed to do so and imposed a \$4,500 total forfeiture, with a \$1,500 upward adjustment, due in part to the duration of the violation.⁵¹ St. George's failure to register its cable system, despite multiple warnings and an order directing it to certify compliance on or before October 30, 2011, demonstrates a blatant disregard of the Commission's authority, warranting an upward adjustment in the amount of \$3,000 to the base forfeiture amount associated with a failure to file the required form before December 16, 2011, for a total forfeiture of \$6,000.

24. **Failure to Submit Certification of Compliance.** In the *St. George Cable First NAL*, the Bureau directed St. George to submit a written Certification of Compliance with the EAS and Form 322 requirements on or before October 30, 2011.⁵² It failed to do so. Because St. George's failure to respond regarding its EAS compliance "touch[es] on an area of critical importance—the integrity of the EAS

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interference to the U.S. Air Force, and exceeding cable signal leakage limits on one day after being ordered to cease operations). Cf. *Charter Commc 'ns NAL*, 16 FCC Rcd at 8487-8488 ("considering the size of the system," assessing \$20,000 proposed forfeiture to cable operator serving approximately 1,000 subscribers who ceased operations one day after being ordered to do so and exceeded CLI for a total of two days). Although similar to these cases, St. George's actions can be distinguished from them and must be evaluated on an individual basis. While St. George apparently did not cause actual interference to the FAA or the military and operates a system of similar size to the system at issue in the *Charter Commc 'ns NAL*, St. George exceeded the CLI limit on at least four days, operated without authorization on at least three days spanning a period of time of more than a month, exceeded cable signal leakage limits multiple times on each of those days, and has a prior history of cable signal leakage violations.

⁴⁸ Cf. *A Radio Co., Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 6561 (Enf. Bur. 2011) (imposing \$25,000 forfeiture for failing to comply with terms of Bureau-issued Consent Decree).

⁴⁹ See *St. George Cable First NAL*, 26 FCC Rcd at 13524.

⁵⁰ See 47 C.F.R. § 11.11 (requiring analog cable systems serving fewer than 5,000 subscribers from a headend to comply with EAS requirements as of October 1, 2002).

⁵¹ See *St. George Cable First NAL*, 26 FCC Rcd at 13524.

⁵² *Id.*

system,” we conclude that an upward adjustment of \$1,500 to the base forfeiture of \$4,000 is warranted, resulting in a total forfeiture of \$5,500.⁵³

25. Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that St. George is apparently liable for a total forfeiture in the amount of \$236,500 consisting of the following elements: \$150,000 for operating its system with excessive cable signal leakage; \$37,500 for failing to cease operations when ordered and operating without authority; \$37,500 for failing to install and maintain operational EAS equipment; \$6,000 for failing to file the required registration form; and \$5,500 for failing to respond to a Bureau order to submit the Certification of Compliance. As discussed above, the forfeitures include upward adjustments based on St. George’s prior history of non-compliance with the rules at issue, which include those designed to protect life and safety. The upward adjustments are also based on the seriousness of St. George’s repeated failure to obey a Commission order directing it to cease operations to avoid interference with aeronautical frequencies, as well as the seriousness of its violation of a Bureau order directing it to certify that it was in compliance with the Commission’s EAS requirements.

E. Reporting Requirement and Conclusion

26. We also direct St. George to submit a written statement, pursuant to Section 1.16 of the Rules,⁵⁴ signed under penalty of perjury that St. George has (1) installed operational EAS equipment for the St. George Island system in compliance with Section 11.35 of the Rules, (2) repaired all signal leaks in excess of 20 μ V/m at three meters at any point in its cable system, (3) repaired all system leaks, such that its system is in compliance with the CLI limit, and (4) come into compliance with all other cable signal leakage rules, including, but not limited to, (i) monitoring its system to detect leaks,⁵⁵ (ii) maintaining a log of all leaks,⁵⁶ and (iii) conducting annual signal leakage testing when required and reporting the results of such tests to the Commission when due.⁵⁷ This statement must be provided to the Tampa Office at the address listed in paragraph 30 within thirty (30) calendar days after the release date of this NAL.

27. Finally, we remind St. George that it remains subject to the terms of the *Cessation Order* and may not resume operations until it obtains written approval from the District Director of the Tampa Office. In addition, before resuming operations, St. George must demonstrate that its system complies with the Commission’s rules regarding the CLI using the procedures described in Section 76.611 of the Rules.⁵⁸ Continued violation of the *Cessation Order* will be viewed as a particularly egregious violation and may subject St. George to further enforcement action, including more severe penalties.

⁵³ See, e.g., *Opp Educ. Broad. Found.*, Notice of Apparent Liability for Forfeiture and Order, 24 FCC Rcd 11237, 11241, para. 12 (Enf. Bur. 2009) (imposing a \$1,500 upward adjustment to the base of \$4,000 for each failure to respond to two Bureau inquiries regarding EAS compliance, resulting in a total forfeiture of \$11,000).

⁵⁴ 47 C.F.R. § 1.16.

⁵⁵ See 47 C.F.R. § 76.614.

⁵⁶ See 47 C.F.R. § 76.1706.

⁵⁷ See 47 C.F.R. §§ 76.611, 76.1803 (requiring multi-channel video programming distributors to submit the results of annual signal leakage testing to the Commission on an FCC Form 320).

⁵⁸ 47 C.F.R. § 76.611.

IV. ORDERING CLAUSES

28. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's rules, St. George Cable, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of two hundred thirty-six thousand five hundred dollars (\$236,500) for willfully and repeatedly violating an Enforcement Bureau directive to submit a certification and violations of Sections 11.35(a), 76.605(a)(12), 76.611(a)(1), 76.613(c), and 76.1801 of the Commission's rules.⁵⁹

29. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, St. George 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.

30. **IT IS FURTHER ORDERED** that St. George Cable, Inc. **SHALL SUBMIT** a statement as described in paragraph 26 to the Tampa Office within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order. The statement must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Tampa Office, 4010 W. Boy Scout Blvd., Suite 425, Tampa, Florida 33607. St. George Cable, Inc. shall also e-mail the written statement to SCR-Response@fcc.gov.

31. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. St. George Cable, Inc. shall send electronic notification of payment to SCR-Response@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.⁶⁰ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank –

⁵⁹ 47 U.S.C. § 503(b); 47 C.F.R. §§ 1.80, 11.35(a), 76.605(a)(12), 76.611(a)(1), 76.613(c), 76.1801.

⁶⁰ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

32. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁶¹ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

33. 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 1.16 and 1.80(f)(3) of the Rules.⁶² The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Tampa Office, 4010 W. Boy Scout Blvd., Suite 425, Tampa, Florida 33607 and include the NAL/Acct. No. referenced in the caption. St. George Cable, Inc. also shall email the written response to SCR-Response@fcc.gov.

34. 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.

35. **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 First Class Mail, to St. George Cable, Inc. at P.O. Box 1090, St. George Island, Florida 32328, and to its counsel, Lewis H. Goldman, P.C., 45 Dudley Court, Bethesda, MD 20814.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁶¹ See 47 C.F.R. § 1.1914.

⁶² 47 C.F.R. §§ 1.16, 1.80(f)(3).