

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

In the Matter of)	
)	File No.: EB-11-OR-0134
Allen's TV Cable Service, Inc.)	NAL/Acct. No.: 201232620001
)	FRN: 0003746898
Morgan City, Louisiana)	Community Unit: LA0006
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: February 13, 2012

Released: February 13, 2012

By the District Director, New Orleans Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Allen's TV Cable Service, Inc. (ATVCI), owner of the cable system in Morgan City, Louisiana, apparently willfully violated Section 76.1700(b) of the Commission's rules (Rules),¹ by failing to make its public inspection file available during regular business hours. We conclude that ATVCI is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000). In addition, no later than thirty (30) calendar days from the date of this NAL, ATVCI must submit a statement signed under penalty of perjury that its public inspection file is available during regular business hours.

II. BACKGROUND

2. On October 26, 2011, agents of the Enforcement Bureau's New Orleans Office (New Orleans Office) requested to inspect the public inspection file located in ATVCI's only office in Morgan City, Louisiana during regular business hours, but ATVCI's customer service representative refused to make the file available. The agent telephoned ATVCI's chief executive officer (CEO), who stated the agent could not view the public inspection file until the next day when a manager was present.² ATVCI's CEO stated customer service representatives are not allowed access to the system's public inspection file and the file is only accessible when a manager is present.

III. DISCUSSION

3. Section 503(b) of the Communications Act of 1934, as amended (Act),³ 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.⁴ The legislative history to Section 312(f)(1) of the Act clarifies that this definition

¹ 47 C.F.R. § 76.1700(b).

² The agents from the New Orleans Office returned to ATVCI's office on October 27, 2011 when the manager was present and observed the public inspection file was complete.

³ 47 U.S.C. § 503(b).

⁴ 47 U.S.C. § 312(f)(1).

of willful applies to both Section 312 and 503(b) of the Act⁵ and the Commission has so interpreted the term in the Section 503(b) context.⁶ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁷ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁸

A. Public Inspection File Violation

4. Section 76.1700(b) of the Rules states that “the public inspection file [of cable system operators] shall be maintained at the office which the system operator maintains for the ordinary collection of subscriber charges, resolution of subscriber complaints, and other business or at any other accessible place in the community served by the system unit(s). The public inspection file shall be available for public inspection at any time during regular business hours.”⁹ On October 26, 2011, agents from the New Orleans Office requested to inspect ATVCI’s public inspection file during regular business hours at its only office within Morgan City, but ATVCI’s customer service representative refused to make the file available. ATVCI stated that its public inspection file was only available when a manager was present and no manager was available in Morgan City on October 26, 2011. Based on the evidence before us, we find that ATVCI’s apparently willfully violated Section 76.1700(b) of the Rules by failing to make its public inspection file available to the public during regular business hours.

B. Proposed Forfeiture Amount and Reporting Requirement

5. Pursuant to the Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for violation of public inspection file rules is \$10,000.¹⁰ 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.¹¹ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules,

⁵ 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 ...”).

⁶ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

⁷ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

⁸ 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.* at 1362.

⁹ 47 C.F.R. § 76.1700(b).

¹⁰ *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.

¹¹ 47 U.S.C. § 503(b)(2)(E).

and the statutory factors to the instant case, we conclude that ATVCI is apparently liable for a forfeiture of \$10,000.

6. We direct ATVCI to submit a written statement, pursuant to Section 1.16 of the Rules,¹² signed under penalty of perjury by an officer or director of ATVCI, certifying that its public inspection file is available during regular business hours. This statement must be provided to the New Orleans Office at the address listed in paragraph 11 within thirty (30) calendar days of the release date of this NAL.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.204, 0.311, 0.314 and 1.80 of the Commission's rules, Allen's TV Cable Service, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violations of Section 76.1700(b) of the rules.¹³

8. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order Allen's TV Cable Service, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. **IT IS FURTHER ORDERED** that Allen's TV Cable Service, Inc. **SHALL SUBMIT** a statement as described in paragraph 6 to the New Orleans Office within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

10. 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 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. 20554.¹⁴ If you have questions about payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. ATVCI shall send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

11. 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.¹⁵ The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, New Orleans Office, 2424 Edenborn Ave. Suite 460, Metairie, LA 70001 and must include the NAL/Acct. No. referenced in the caption. ATVCI also shall email the written response to SCR-Response@fcc.gov.

¹² 47 C.F.R. § 1.16.

¹³ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 76.1700(b).

¹⁴ See 47 C.F.R. § 1.1914.

¹⁵ 47 C.F.R. §§ 1.16, 1.80(f)(3).

12. 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.

13. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Allen's TV Cable Service, Inc. at 800 Victor II Blvd, PO Box 2643, Morgan City, LA 70380.

FEDERAL COMMUNICATIONS COMMISSION

Walter Gemon
District Director
New Orleans
South Central Region
Enforcement Bureau