

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

In the Matter of)	
)	
Richards TV Cable Co. Inc.)	File No.: EB-08-DT-0201
)	NAL/Acct. No.: 201232360004
Jerusalem, Ohio)	FRN: 0021400247
)	PSID No.: 008085
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: February 13, 2012

Released: February 13, 2012

By the District Director, Detroit Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Richards TV Cable Co. Inc. (Richards TV), operator of a cable television system in Jerusalem, Ohio, apparently willfully and repeatedly violated Section 11.35 of the Commission's rules (Rules)¹ by failing to install emergency alert system (EAS) equipment. We conclude that Richards TV is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000). We further direct Richards TV to submit, no later than thirty (30) calendar days from the release date of this NAL, a written statement signed under penalty of perjury stating that its cable systems are now in compliance with Section 11.35 of the Rules.

II. BACKGROUND

2. On June 19, 2008, agents from the Enforcement Bureau's Detroit Office (Detroit Office) inspected Richards TV's cable system serving Jerusalem, Ohio, with the cable system's owner, Mark Richards. The agents observed that the cable system did not have any EAS equipment installed. Mr. Richards admitted that the cable system did not have any EAS equipment and told the agents that he was having trouble finding affordable equipment. On September 14 and 15, 2009, agents from the Detroit Office reinspected Richards TV's cable system serving Jerusalem, Ohio, and found that the cable system still did not have any EAS equipment installed. On April 25, 2011, Mr. Richards reported by telephone to an agent in the Detroit Office that the cable system serving Jerusalem, Ohio still did not have any EAS equipment.

III. DISCUSSION

3. Section 503(b) of the Communications Act of 1934, as amended (Act),² 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

¹ 47 C.F.R. § 11.35.

² 47 U.S.C. § 503(b).

Act defines “willful” as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.³ 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 Act⁴ and the Commission has so interpreted the term in the Section 503(b) context.⁵ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁶ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁷

A. Failure to Install Emergency Alert System Equipment

4. Every analog and digital cable system is part of the nationwide EAS network and is categorized as a participating national EAS source unless the cable system affirmatively requests authority to refrain from participation, and that request is approved by the Commission.⁸ Cable systems must comply with EAS requirements on a headend basis.⁹ The EAS enables the President and state and local governments to provide immediate communications and information to the general public.¹⁰ 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 officials.¹¹ Required monthly and weekly tests originate from EAS Local or State Primary sources and must be retransmitted by the participating cable system.¹² 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.

5. Section 11.35 of the Rules requires all cable systems to ensure that the EAS encoders, EAS decoders, and attention signal generating and receiving equipment used as part of the EAS are installed

³ 47 U.S.C. § 312(f)(1).

⁴ 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”).

⁵ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454.

⁶ 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).

⁷ 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.*, 16 FCC Rcd at 1362.

⁸ 47 C.F.R. §§ 11.11, 11.19, 11.41.

⁹ 47 C.F.R. § 11.11.

¹⁰ 47 C.F.R. §§ 11.1, 11.21.

¹¹ 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.

¹² 47 C.F.R. § 11.61.

and operational so that the monitoring and transmitting functions are available during the times the stations and systems are in operation.¹³ During inspections conducted on June 19, 2008, September 14, 2009, and September 15, 2009, agents from the Detroit Office observed that Richards TV's cable system serving Jerusalem, Ohio, did not have any operational EAS equipment installed. Further, during the inspection, Mr. Richards, the owner of the cable system, admitted that the system did not have the required EAS equipment. The owner also reported to an agent by telephone on April 25, 2011, that as of that date, Richards TV still had not installed EAS equipment at its cable system serving Jerusalem, Ohio. Because Richards TV consciously operated its cable system without EAS equipment for more than one day, we find the apparent violations to be willful and repeated. Based on the evidence before us, we find that Richards TV apparently willfully and repeatedly violated Section 11.35 of the Rules by failing to install EAS equipment at its cable system in Jerusalem, Ohio.

B. Proposed Forfeiture and Reporting Requirement

6. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for failing to have EAS equipment installed or operational is \$8,000.¹⁴ 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.¹⁵ Richards TV's failure to install EAS equipment at its cable system despite being warned repeatedly to do so during inspections in June 2008 and again in September 2009, demonstrates a deliberate disregard for the Commission's requirements. Based on the evidence before us, we find that an upward adjustment of \$2,000 is warranted. Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Richards TV is apparently liable for a total forfeiture in the amount of \$10,000.

7. We direct Richards TV to submit a statement, pursuant to Section 1.16 of the Rules,¹⁶ signed under penalty of perjury by an officer or director of Richards TV stating that its cable system serving Jerusalem, Ohio is now in compliance with Section 11.35 of the Rules. The statement should also state whether Richards TV's cable systems serving Bealsville, Ohio and New Athens, Ohio are in compliance with Section 11.35 of the Rules. This statement must be provided to the Detroit Office at the address listed in paragraph 10 within thirty (30) calendar days of the release date of this NAL.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204(b), 0.311, 0.314 and 1.80 of the Commission's rules, Richards TV Cable Co. Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violation of Section 11.35 of the Rules.¹⁷

¹³ 47 C.F.R. § 11.35. Section 11.11 of the Rules states that "[a]nalog cable systems serving <5,000 subscribers are permitted to operate without an EAS encoder if they install an FCC-certified decoder." Richards TV reported to the agent that it has fewer than 5,000 subscribers, so Richards TV is only required to install a decoder. Richards TV also reported in the last Form 325 that it filed with the Commission that it had fewer than 5,000 subscribers.

¹⁴ *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.

¹⁵ 47 U.S.C. § 503(b) (2) (E).

¹⁶ 47 C.F.R. § 1.16.

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

9. **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, Richards TV Cable Co. Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. **IT IS FURTHER ORDERED** that Richards TV Cable Co., Inc. **SHALL SUBMIT** a written statement as described in paragraph 7 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, Northeast Region, Detroit Office, 24897 Hathaway Street, Farmington Hills, Michigan 48335. Richards TV Cable Co. Inc. shall also email the written statement to NER-Response@fcc.gov.

11. 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. 20554.¹⁸ 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. Richards TV Cable Co. Inc. shall also send electronic notification on the date said payment is made to NER-Response@fcc.gov.

12. 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.¹⁹ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Northeast Region, Detroit Office, 24897 Hathaway Street, Farmington Hills, Michigan 48335 and include the NAL/Acct. No. referenced in the caption. Richards TV Cable Co. Inc. also shall email the written response to NER-Response@fcc.gov.

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.

¹⁸ See 47 C.F.R. § 1.1914.

¹⁹ 47 C.F.R. §§ 1.16, 1.80(f)(3).

14. **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 Richards TV Cable Co. Inc. at P.O. Box 2, Jerusalem, Ohio 43747.

FEDERAL COMMUNICATIONS COMMISSION

James A. Bridgewater
District Director
Detroit Office
Northeast Region
Enforcement Bureau