

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CHARTER COMMUNICATIONS	:	
ENTERTAINMENT I, LLC d/b/a	:	
CHARTER COMMUNICATIONS,	:	
Plaintiff,	:	
	:	
-vs-	:	Civil No. 3:06cv41 (PCD)
	:	
Nancy J. TERZIGNI,	:	
Defendant.	:	

RULING ON PLAINTIFF’S MOTION FOR DEFAULT JUDGMENT

Plaintiff Charter Communications, a cable services provider, filed this lawsuit against Defendant Nancy Terzigni, seeking damages and injunctive relief for alleged unauthorized interception or reception of cable services. See Compl. [Doc. No. 1]. Defendant failed to appear or otherwise defend, and default was entered on March 23, 2006 [Doc. No. 7]. Plaintiff now moves for default judgment [Doc. No. 8], which will be **granted** in part as set forth below.

I. BACKGROUND

The complaint alleges the following facts, which are accepted as true for purposes of this motion. Plaintiff is a Delaware limited liability company with a principal place of business in Newtown, Connecticut. It provides cable services in Western Connecticut. Compl. ¶ 5. Plaintiff is in the business of providing cable services to residents of its Connecticut Franchise Areas for which subscribers pay a monthly fee. Id. ¶ 8. Plaintiff’s signals are: (1) private communications not intended for public or other use without authorization; (2) communications services offered over a cable system and (3) satellite cable programming. Id. ¶ 9.

Defendant resides at 68 Aspetuck Village, New Milford, Connecticut and at all times

relevant to Plaintiff's complaint was not authorized to receive Plaintiff's cable services. Id. ¶ 7. Plaintiff alleges, upon information and belief, Defendant "caused on at least two separate occasions the tampering with and connection to [Plaintiff's] cable lines providing cable services to the Premises, thereby effecting the unauthorized use and interception of [Plaintiff's] cable services." Id. ¶ 10. An October 14, 2005 investigation revealed that the cable lines and equipment were connected without authorization, thereby permitting Defendant to receive Plaintiff's cable services. Id. ¶ 11. Plaintiff disconnected the cable lines and equipment, however, a subsequent investigation on October 18, 2005 revealed that the cable lines and equipment were again connected without authorization. Id. ¶ 11-12. Plaintiff again disconnected the cable lines and equipment. Id. ¶ 12.

Plaintiff filed the present action on January 10, 2006. Default was entered against Defendant for failure to plead or otherwise defend on March 23, 2006. On April 19, 2006, Plaintiff moved for entry of judgment on default, seeking \$20,000 in statutory damages for Defendant's two violations of 47 U.S.C. § 553(a) pursuant to 47 U.S.C. § 553(c)(3)(A)(ii) and requesting that the Court enter an order of injunction incident to the entry of default judgment. In addition, Plaintiff seeks to recover attorneys' fees and costs incurred in prosecution this action, in accordance with 47 U.S.C. § 553(c)(2)(C). Defendant has not filed a memorandum in opposition to Plaintiff's motion.

II. DISCUSSION

As Plaintiff is a cable operator, within the meaning of 47 U.S.C. §§ 522(5) and 553(a), and provides cable service, within the meaning of 47 U.S.C. § 522(6) to residents of the franchise area, including the community of New Milford, the federal Communications Act provides

Plaintiff with a federal right of action to seek damages (actual or statutory, at the election of the aggrieved party), attorneys' fees and costs, as well as injunctive relief, pursuant to 47 U.S.C. § 553. Plaintiff seeks statutory damages, an order of injunction and attorneys' fees and costs for Defendant's alleged violation of 47 U.S.C. § 553(a)(1), which provides that "[n]o person shall intercept or receive or assist in intercepting or receiving any communications service offered over a cable system, unless specifically authorized to do so by a cable operator or as may otherwise be specifically authorized by law."

A. Statutory Damages

Plaintiff argues that the allegations in the Complaint are sufficient to establish Defendant's liability under 47 U.S.C. § 553(a)(1). The Court agrees that it is reasonable to infer that Defendant unlawfully connected and intercepted Plaintiff's cable signals. See Vermont Teddy Bear Co., Inc. v. 1-800 Beargram Co., 373 F.3d 241, 246 (2d Cir. 2004) ("a default is an admission of all well-pleaded allegations against the defaulting party"). Accordingly, Plaintiff has established Defendant's liability under 47 U.S.C. § 553(a).

Plaintiff seeks the maximum statutory damages pursuant to 47 U.S.C. § 553(c)(3)(A)(ii), which provides that "the party aggrieved may recover an award of statutory damages for all violations involved in the action, in a sum of not less than \$250 or more than \$10,000 as the court considers just." Each prohibited activity—e.g., each act of tampering with cable lines—constitutes a separate violation of Section 553. The Court finds that Plaintiff has established two separate violations here. Although the Court will not award the maximum amount of statutory damages for these two violations, it is determined that a statutory damage award is appropriate. Accordingly, the Court awards statutory damages in the amount of \$1,000

for the first violation and \$2,000 for the second violation, for a total of \$3,000.

In addition, if “the court finds that the violation was committed willfully and for purposes of commercial advantage or private financial gain,” it has discretion to “increase the award of damages . . . by an amount of not more than \$50,000.” 47 U.S.C. § 553(c)(3)(B). Plaintiff has not shown, however, that “the violation was committed willfully and for purposes of commercial advantage or private financial gain.” *Id.* Accordingly, the Court declines to increase the award pursuant to Section 553(c)(3)(B).

B. Injunction

Pursuant to Plaintiff’s request, the Court further enjoins Defendant from any further violations of 47 U.S.C. § 553(a). Specifically, Terzigni, her family, servants, agents, employees, successors and assigns and those persons in active concert or participation with any of them, are permanently enjoined and restrained from engaging in, aiding, abetting or otherwise promoting or supporting interception or reception of the cable television programming, service or signal of Charter or its parent companies or entity that is an affiliated company, partnership, or subsidiary of Charter or its parent companies (the “Charter Entities”), including, without limitation, the following: connecting, attaching, splicing into, tampering with or in any way using cable wires of Charter or the Charter Entities for purposes of obtaining any of the programming and services of Charter or the Charter Entities without Charter’s express permission and authorization; manufacturing, ordering, purchasing, using, selling, distributing, installing, owning or possessing any equipment, components or parts used to make any such equipment capable of unscrambling, intercepting, receiving, transmitting, retransmitting, decoding or in any way making available all or part of the programming and services of Charter or the Charter entities without Charter’s

authorization; attaching or connecting any such equipment to any property of Charter or the Charter Entities without Charter's authorization; tampering with or making any connection or any disconnection or manipulating, in any manner, for any purpose, cable systems owned, operated, or managed by Charter or the Charter Entities without Charter's express permission and authorization, in accordance with 47 U.S.C. § 553(c)(2)(A).

C. Attorneys' Fees and Costs

Plaintiff requests, pursuant to 47 U.S.C. § 553(c)(2)(C),¹ that the Court award it the attorneys' fees and costs incurred in the prosecution of this action. Plaintiff seeks reimbursement for costs in the amount of \$312.00, which amount includes the \$250.00 filing fee as well as the State Marshal's \$62.00 fee for service of the Summons and Complaint against the Defendant. See Cohen Aff. at 2. These costs will be allowed. Plaintiff also submitted attorney time and task records showing: 1.4 hours of Attorney Cohen's time, billed at \$380.00 per hour in 2006; 10.6 hours of Attorney Mihalic's time, billed at \$160.00 per hour in 2005 and \$175.00 per hour in 2006; 0.6 hours of Paralegal Colin's time, billed at \$150.00 per hour in 2006; and 6.4 hours of Paralegal Stine's time, billed at \$85.00 per hour in 2005 and \$95.00 per hour in 2006, for a total requested attorneys' fee award of \$2,995.00. See Cohen Aff. at 2-3. The Court finds that an attorneys' fee award is appropriate and finds that an award of \$2,500.00 is reasonable both as to hourly rate and the amount of time spent on the identified tasks. Accordingly, Plaintiff's request for an award of \$3,307.00, representing the costs and attorneys' fees associated with the prosecution of this action, is granted in part, with this Court awarding a total of \$2,812.00 for

¹ 47 U.S.C. § 553(c)(2)(C) provides that: "The court may . . . direct the recovery of full costs, including awarding reasonable attorneys' fees to an aggrieved party who prevails."

attorneys' fees and costs.

III. CONCLUSION

Absent objection, Plaintiff's request for entry of judgment on default [Doc. No. 8] is **granted** in part. See D. Conn. L. Civ. R. 7(a) ("Failure to submit a memorandum in opposition to a motion may be deemed sufficient cause to grant the motion."). Plaintiff is awarded the sum of \$3,000.00 in statutory damages and \$2,812.00 in attorneys' fees and costs against Defendant Nancy Terzigni. The Clerk is directed to enter judgment accordingly and to close this case.

SO ORDERED.

Dated at New Haven, Connecticut, April ___, 2006.

Peter C. Dorsey
United States District Judge