

Federal Communications Commission

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

In the Matter of)	
James Cable Partners, LP)	
d/b/a CommuniComm Services)	NAL/Acct. No. 20013280-0002
)	EB-00-DV-267
Physical System ID 006437)	
Akron, Colorado)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: June 1, 2001

By the District Director, Denver Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL") we find that James Cable Partners, LP, d/b/a CommuniComm Services ("CommuniComm") has apparently violated Sections 76.605(a)(12) and 76.611(a) of the Commission's Rules (the "Rules") for failure to comply with signal leakage standards. We conclude that James Cable Partners, LP, d/b/a CommuniComm Services is apparently liable for a forfeiture in the amount of eight thousand dollars (\$8,000).

II. BACKGROUND

2. The Commission has established cable signal leakage rules to control emissions that could cause interference to aviation frequencies from cable systems. Protecting the aeronautical frequencies¹ from harmful interference is of paramount importance.² To this end, the Commission established basic signal leakage standards.³ We have determined the tolerable levels of unwanted signals on the aeronautical frequencies in two ways. Signal leakage levels that exceed these thresholds are considered harmful interference. First, leakage at any given

¹ The aeronautical bands are 108-137 MHz and 225-400 MHz. These frequencies encompass both radionavigation frequencies, 108-118 MHz and 328.6-335.4 MHz, and communications frequencies, 118-137 MHz and 225-328.6 MHz and 335.4-400 MHz. Deserving particular protection are the international distress and calling frequencies 121.5 MHz, 156.8 MHz, and 243 MHz. *See* 47 C.F.R. §76.616. These frequencies are critical for Search and Rescue Operations including use by Emergency Locator Transmitters (ELT) on planes and Emergency Position Indicating Radio Beacons (EPIRB) on boats. *See generally* 47 C.F.R. Part 80, Subpart V and 47 C.F.R. §§87.193-87.199.

² Harmful interference includes any interference that "endangers the functioning of a radionavigation service or of other safety services." *See* 47 C.F.R. §§2.1 & 76.613(a).

³ Memorandum Opinion and Order, 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, Docket No. 21006, 101 F.C.C.2d 117, para. 14 (1985) [*hereinafter* MO&O].

point must not exceed 20 $\mu\text{V}/\text{m}$.⁴ Second, we set basic signal leakage performance criteria for the system as a prerequisite for operation on aeronautical frequencies. This is the system's Cumulative Leakage Index (CLI). We require annual measurement of each system's CLI to demonstrate safe levels of signal leakage,⁵ the results of which must be reported to us.⁶ We also require routine monitoring of the system to detect leaks.⁷ Whenever harmful interference occurs, the cable system operator must eliminate it.⁸ Further, should the harmful interference not be eliminated, we will intervene and require cessation of operation of the portion of the system involved or reduction of power⁹ below the levels specified in Section 76.610 of the Commission's Rules.¹⁰ Because we cannot insure that leakage will not occur, we have also retained the requirement that the signal carriers of cable systems must be offset from the frequencies used by aeronautical services.¹¹

III. DISCUSSION

3. On June 6, 2000, Agents from the Denver Office conducted a routine inspection of the system cable plant to identify leaks and determine compliance with the basic signal leakage criteria. Nine leaks were identified and measured, which ranged from 104 $\mu\text{V}/\text{m}$ to 2,723 $\mu\text{V}/\text{m}$. The system CLI was found to have a CLI ($10 \log I_{\infty}$) in excess of 64.¹² At the inspection, by direction of the Denver District Director, the Agents orally instructed the General Manager of the system to cease operation on aeronautical band frequencies until the leaks were repaired and the system complied with the basic signal leakage criteria. On June 7, 2000, the oral order was followed by a written order delivered by fax at 9:10 am.

4. CommuniComm advised the Denver District Director on June 7, 2000, that the system was in compliance with the leakage restrictions and requested permission to resume normal operations. Permission was granted. An Agent from the Denver Office conducted a follow-up inspection of the system on June 7, 2000, and identified two leaks. The system did have, however, a CLI less than 64 at that time.

5. The Denver Office issued an Official Notice of Violation ("NOV") on February 12, 2001. CommuniComm responded on February 27, 2001. In the reply, CommuniComm identifies the specific actions taken to correct the violations noted in the NOV and to preclude their recurrence, as well as, a time line for completion of such actions.

6. The Commission assesses monetary forfeitures pursuant to Section 503(b) of the

⁴ 47 C.F.R. §76.605(a)(12).

⁵ 47 C.F.R. §76.611(a).

⁶ 47 C.F.R. §76.615(b)(7).

⁷ 47 C.F.R. §76.614.

⁸ 47 C.F.R. §76.613(b).

⁹ 47 C.F.R. §76.613(c).

¹⁰ 47 C.F.R. §76.610.

¹¹ 47 C.F.R. §76.612. MO&O, *supra* note 3, at para. 14.

¹² The calculated CLI is 66.5. A maximum CLI of 64 is the basic signal leakage performance criteria of Section 76.611(a)(1) of the Commission's Rules. Leakage that exceeds this level is deemed to pose a serious threat to air traffic safety communications.

Communications Act of 1934, *as amended*, (“Act”)¹³ as implemented in Section 1.80 of the Commission’s Rules.¹⁴ A forfeiture may be assessed against a person who the Commission finds to have willfully or repeatedly failed to comply with the provisions of the Act or the Commission’s Rules.¹⁵ “Willful” in this context means that the person knew that he was doing the act in question, regardless of intent to violate the provision.¹⁶ “Repeated” means commission or omission of an act more than once. Forfeiture amounts are decided in accordance with Section 503(b)(2) of the Communications Act and the Commission’s forfeiture guidelines in Section 1.80(b)(4) of the Commission’s Rules.¹⁷

7. We conclude that CommuniComm has repeatedly violated the Commission’s cable signal leakage rules. As discussed above, on June 6 and 7, 2000, the cable system in Akron, Colorado, had leaks that exceeded the maximum allowable field strength of 20 $\mu\text{v}/\text{m}$ at 3m, in repeated violation of Section 76.605(a)(12) of the Commission’s Rules.¹⁸ On June 6, 2000, CommuniComm willfully violated Section 76.611(a) of the Commission’s Rules¹⁹ by failing to comply with the basic signal leakage performance criteria.

8. Based on the evidence before us, we find that James Cable Partners, LP, d/b/a CommuniComm Services violated Sections 76.605(a)(12) and 76.611(a) of the Commission's Rules by failing signal leakage standards. The Commission's *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), recon. denied, 15 FCC Rcd 303(1999) (“Policy Statement”), sets the base forfeiture amount for violation of rules relating to distress and safety frequencies is \$8,000 per violation; the maximum is \$27,500 for each violation or each day of a continuing violation.²⁰ Cable signal leakage in the aeronautical bands constitutes harmful interference to distress and safety frequencies. Multiple violations of the signal leakage standards were observed on June 6 and 7, 2000, and the system violated CLI on June 6, 2000. We believe the appropriate forfeiture for CommuniComm’s repeated failure to comply with leakage limits on June 6 and 7, 2000, and the system violated CLI on June 6, 2000, is \$8,000.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, 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, James Cable Partners, LP, d/b/a CommuniComm Services, is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of eight thousand dollars (\$8,000) for willful or repeated violation of 76.605(a)(12) and 76.611(a) of the Commission’s Rules.

10. IT IS FURTHER ORDERED, PURSUANT TO Section 1.80 of the Commission’s Rules, within

¹³ 47 U.S.C. §503(b).

¹⁴ 47 C.F.R. §1.80.

¹⁵ 47 C.F.R. §1.80(a)(2).

¹⁶ Southern California Broadcasting Company, 6 FCC Rcd 4387, para. 5 (1991).

¹⁷ 47 U.S.C. §503(b)(2), 47 C.F.R. §1.80(b)(4). *See also* The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate Forfeiture Guidelines, 12 FCC Rcd 17087.

¹⁸ 47 C.F.R. §76.605(a)(12).

¹⁹ 47 C.F.R. §76.611(a).

²⁰ 47 C.F.R. §1.80(b)(4).

Federal Communications Commission

thirty days of the release date of this NOTICE OF APPARENT LIABILITY, James Cable Partners, LP, d/b/a CommuniComm Services, 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 should note the NAL/Acct. No. 20013280-0002.

12. A response regarding this matter, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554, and MUST INCLUDE THE NAL/Acct. No. 20013280-0002.

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 under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.²¹

15. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent, by Certified Mail/Return Receipt Requested, No. P 028 896 936, to James Cable Partners, LP, d/b/a CommuniComm Services, 38710 Woodward Avenue – Suite 180, Bloomfield Hills, Michigan 48304.

FEDERAL COMMUNICATIONS COMMISSION

Leo E. Cirbo
District Director, Denver Office

²¹ See 47 C.F.R. §1.1914.