

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

In the Matter of)	
)	File Number EB-01-DL-703
Friendship Cable of Texas, Inc.)	
)	NAL/Acct.No. 200232500002
Physical System ID 005073)	
Vernon, Texas)	FRN 004-9995-61
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

**CORRECTED COPY - CORRECTED TO REFLECT ACTUAL RELEASE DATE - NO
ADDITIONAL RESPONSE REQUIRED**

Released: February 4, 2002

By the Enforcement Bureau, Dallas Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find that Friendship Cable of Texas, Inc. (Friendship) apparently violated Sections 76.605(a)(12) and 76.611(a) of the Commission's Rules¹ by failure to comply with signal leakage standards. We conclude that Friendship 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 frequencies² from harmful interference is of paramount importance.³ To this end, the Commission established basic signal leakage standards.⁴ The Commission has determined the tolerable levels of unwanted signals on the

¹ 47 C.F.R §§ 76.605(a)(12) and 76.611(a)

² 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.

³ 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).

⁴ Memorandum Opinion and Order, Amendment of Part 76 of the Commission's Rules to Add Frequency

aeronautical frequencies in two ways. Signal leakage levels that exceed these thresholds are considered harmful interference. First, leakage at any given point must not exceed 20 $\mu\text{V}/\text{m}$.⁵ Secondly, the Commission 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). The Commission requires annual measurement of each system's CLI to demonstrate safe levels of signal leakage,⁶ the results of which must be reported to the Commission.⁷ The Commission also requires routine monitoring of the system to detect leaks.⁸ Whenever harmful interference occurs, the cable system operator must eliminate it.⁹ Further, should the harmful interference not be eliminated, the Commission will intervene and require cessation of operation of the portion of the system involved or reduction of power¹⁰ below the levels specified in Section 76.610 of the Commission's Rules.¹¹ Because the Commission cannot insure that leakage will not occur, the Commission has also retained the requirement that the signal carriers of cable systems must be offset from the frequencies used by aeronautical services.¹²

III. DISCUSSION

3. On September 24 and 25, 2001, an agent from the Commission's Dallas office conducted an inspection of a portion of the Friendship cable system serving Vernon, Texas to identify leaks and determine compliance with the basic signal leakage criteria. The agent identified and measured six leaks which ranged from 177 $\mu\text{V}/\text{m}$ to 2,415 $\mu\text{V}/\text{m}$. The system was found to have a CLI ($10 \log I_{\infty}$) value of 72.7, which is significantly in excess of the maximum allowable level of 64.¹³

4. On September 25, 2001, the Commission's Dallas office contacted Friendship at their headquarters in Tyler, Texas and delivered an oral order to cease operation on aeronautical band frequencies until the leaks were repaired and the system complied with the basic signal leakage criteria. The oral order was followed by a written order delivered by facsimile and by regular mail.

5. Friendship informed the Commission's Dallas office on September 26, 2001, that the system was in compliance with the leakage restrictions and requested permission to resume normal operations. The report by Friendship, which requested permission to resume normal operations, included detailed

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].

⁵ 47 C.F.R. §76.605(a)(12).

⁶ 47 C.F.R. §76.611(a).

⁷ 47 C.F.R. §76.615(b)(7).

⁸ 47 C.F.R. §76.614.

⁹ 47 C.F.R. §76.613(b).

¹⁰ 47 C.F.R. §76.613(c).

¹¹ 47 C.F.R. §76.610.

¹² 47 C.F.R. §76.612. MO&O, *supra* note 4, at para. 14.

¹³ 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.

information concerning the leaks that they found and repaired while checking the entire system for leakage. The CLI of the system based on measurements reported by Friendship was 79.03 prior to repairs being made. Permission to resume normal operation was granted.

6. On September 27, 2001 an agent from the Commission's Dallas office conducted a follow up inspection and found the system in compliance with the basic signal leakage criteria.

7. The Commission assesses monetary forfeitures pursuant to Section 503(b) of the Communications Act of 1934, *as amended*, ("Act")¹⁴ as implemented in Section 1.80 of the Commission's Rules.¹⁵ 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.¹⁶ "Willful" in this context means that the person knew that he was doing the act in question, regardless of intent to violate the provision.¹⁷ "Repeated" means commission or omission of an act more than once or, if the commission or omission is continuous, for more than one day. 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.¹⁸

8. We conclude that Friendship has repeatedly violated the Commission's cable signal leakage rules. As discussed above, on September 24 and 25, 2001, the cable system in Vernon, Texas 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.¹⁹ On September 24, 2001, Friendship willfully violated Section 76.611(a) of the Commission's Rules²⁰ by failing to comply with the basic signal leakage performance criteria.

9. Based on the evidence before us, we find that Friendship Cable of Texas, Inc. 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.²¹ 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 September 24 and 25, 2001, and the system violated CLI on September 24, 2001. Section 503(b)(2)(D) of

¹⁴ 47 U.S.C. §503(b).

¹⁵ 47 C.F.R. §1.80.

¹⁶ 47 C.F.R. §1.80(a)(2).

¹⁷ Southern California Broadcasting Company, 6 FCC Rcd 4387, para. 5 (1991).

¹⁸ 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 (1997), recon. denied, 15 FCC Rcd 303 (1999).

¹⁹ 47 C.F.R. §76.605(a)(12).

²⁰ 47 C.F.R. §76.611(a).

²¹ 47 C.F.R. §1.80(b)(4).

the Act requires us to take into account "... the nature, circumstances, extent, and gravity of the violation, 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."²² Considering the entire record and applying the statutory factors listed above, this case warrants a \$8,000 forfeiture.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended,²³ and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,²⁴ Friendship Cable of Texas, Inc. is hereby NOTIFIED of its 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.

11. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules²⁵, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Friendship Cable of Texas, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. 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. referenced in the letterhead above.

13. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE NAL/Acct. No. referenced in the letterhead above.

14. 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.

15. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.²⁶

²² 47 U.S.C. § 503 (b)(2)(D)

²³ 47 U.S.C. § 503(b).

²⁴ 47 C.F.R. §§ 0.111, 0.311, 1.80.

²⁵ 47 C.F.R. § 1.80.

²⁶ See 47 C.F.R. § 1.1914.

16. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Friendship Cable of Texas, Inc. at P.O. Box 9200, Tyler, Texas 75111.

FEDERAL COMMUNICATIONS COMMISSION

James D. Wells
District Director – Dallas Office