

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

In the Matter of)	
)	
Caprice Car Service II)	File No.: EB-04-NY-018
WPDF849)	
)	NAL/Acct. No. 200432380014
Flushing, New York)	
)	FRN: 0005558697

FORFEITURE ORDER

Adopted: December 23, 2004

Released: December 28, 2004

By the Assistant Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of four thousand dollars (\$4,000) to Caprice Car Service II (“*Caprice*”) for willful and repeated violation of Section 1.903(a) of the Commission’s Rules (“*Rules*”).¹ The noted violations involve *Caprice*’s operation of mobile units on an unauthorized frequency.

II. BACKGROUND

2. On or about January 29, 2004, the New York Office received an interference complaint from a licensed user in the Wireless Radio Service. The complainant identified *Caprice*, located in Flushing, New York, as the entity responsible for the interference.

3. On February 4, 2004, a Commission agent conducted an inspection of *Caprice* in Flushing, New York and determined that *Caprice* operated a licensed base station on frequency 154.490 MHz. The agent also determined that *Caprice* operated mobile units on frequency 159.950 MHz. A search of the Commission’s databases found no evidence of a Commission authorization for *Caprice* to operate mobile units on 159.950 MHz in Flushing, New York. The agent advised the *Caprice* dispatcher that the mobile units were operating on an unauthorized frequency.

4. On February 5, 2004, Commission agents, using a mobile direction-finding vehicle, monitored the frequency 159.950 MHz in Flushing, New York and again determined that *Caprice* was operating mobile units on the unauthorized frequency of 159.950 MHz. The agents advised *Caprice*’s owner, Hernan Cardenas, that the mobile units were operating on an unauthorized frequency.

5. On June 14, 2004, the District Director of the New York Office issued a NAL, finding that *Caprice* willfully² and repeatedly³ violated Section 1.903(a) of the Rules by operating its mobile unit

¹47 C.F.R. §1.903(a).

²Section 312(f)(1) of the Act, 47 U.S.C. 312(f)(1), which applies to Section 503(b) of the Act, provides that “[t]he term ‘willful,’ when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

on an unauthorized frequency.⁴ In its response, Caprice apologizes for using the wrong frequency and claims that “the copy of the license we had was not clear and we gave the technician the wrong information.” Caprice seeks a reduction in the forfeiture amount based on the fact that, immediately upon learning that its mobile units were operating on an unauthorized frequency, it applied for authorization to operate on a different frequency. In a separate note attached to its response, Caprice also states that it cannot afford to pay \$4,000 and requests that the Commission consider reducing the forfeiture amount on that basis as well.

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),⁵ Section 1.80 of the Rules⁶, and The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) (“Forfeiture Policy Statement”). In examining Caprice’s response, Section 503(b) of the Act requires that the Commission 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.

7. Section 1.903(a) of the Rules requires that stations in the Wireless Radio Services be used and operated with a valid authorization granted by the Commission. On two occasions, FCC agents determined that Caprice was operating mobile units on the frequency 159.950 MHz. A review of Commission records showed that Caprice did not have Commission authorization to operate mobile units on that frequency in Flushing, New York.

8. Caprice does not challenge the findings in the NAL that it willfully and repeatedly violated Section 1.903(a) of the Rules. Rather, Caprice seeks a reduction based on the fact that it immediately applied for a license to operate on a new frequency immediately after it was notified by the FCC that its mobile units were operating on an unauthorized frequency. Although Caprice's action is commendable, the Commission has repeatedly stated that remedial measures taken to correct a violation are expected and, as such, are not mitigating factors warranting reduction of a forfeiture.⁷

9. Similarly, we decline to reduce the forfeiture amount based on Caprice’s alleged inability to pay because Caprice’s claim is not accompanied by tax returns or other documentation. As stated in the NAL, 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

³As provided by 47 U.S.C. § 312(f)(2), a continuous violation is “repeated” if it continues for more than one day. The Conference Report for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991); See also *Western Wireless Corporation*, 18 FCC Rcd 10319 n.56 (2003).

⁴ See *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200432380014 (Enf. Bur., New York Office, released June 14, 2004).

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ See, e.g., *AT & T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002).

status.⁸ Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.⁹ Accordingly, we find that there is no basis to reduce the assessed forfeiture amount due to inability to pay.

10. We have examined Caprice's response to the NAL pursuant to the statutory factors above as well as in conjunction with the Policy Statement. As a result of our review, we conclude that a four thousand dollar (\$4,000) forfeiture is warranted.

IV. ORDERING CLAUSES

10. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Act¹⁰ and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹¹ Caprice Car Service II **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$4,000 for willfully and repeatedly violating Section 1.903(a) of the Rules.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹² Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. The payment should note NAL/Acct. No. 200432360003, and FRN 0010680940. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹³

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Caprice Car Service II, 135-16 37th Avenue, Flushing, New York 11354.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau

⁸ *NAL* at para. 12.

⁹ *See Policy Statement*, 12 FCC Rcd at 17106-17107; *See also Webnet Communications, Inc.*, 18 FCC Rcd 6870, 6878 (2003)(finding that the Commission's rules require that any request to reduce or cancel a forfeiture based on a claim of inability to pay must include detailed and relevant financial documentation).

¹⁰47 U.S.C. § 503(b).

¹¹47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹²47 U.S.C. § 504(a).

¹³*See* 47 C.F.R. § 1.1914.