

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

In the Matter of)	
)	
Joslyn Gordon)	File No. EB-03-NY-054
Rescue Car Service, Inc.)	NAL/Acct. No. 200332380021
WPTH937)	FRN 0005-1517-66
Brooklyn, New York)	

MEMORANDUM OPINION AND ORDER

Adopted: January 25, 2007

Released: January 29, 2007

By the Assistant Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“*Order*”), we deny a December 17, 2004 Petition for Reconsideration filed by Joslyn Gordon, owner of Rescue Car Service, Inc. (“Rescue”), licensee of radio station WPTH937, Brooklyn, New York. Mr. Gordon seeks reconsideration of a December 3, 2004 *Forfeiture Order*¹ in which the Enforcement Bureau imposed a monetary forfeiture in the amount of four thousand dollars (\$4,000) for willful and repeated violation of Section 90.403(a)(2) of the Commission’s Rules (“Rules”).² The noted violation involves Rescue’s operation of radio transmitting equipment on an unauthorized frequency.

II. BACKGROUND

2. On April 2, 2003, an agent from the Commission’s New York Field Office (“New York Office”) monitored frequency 156.950 MHz in Brooklyn, New York in response to a complaint of interference to frequency 156.950 MHz, VHF Marine Channel 19, in the Maritime Service of the Safety and Special Radio Services. The agent traced the source of the interference to transmissions coming from an antenna located at Rescue’s business at 264A Troy Avenue, Brooklyn, New York. The agent further determined that the transmissions on frequency 151.605 MHz, coming from the same Brooklyn address, generated spurious emissions on 156.950 MHz. A search of the Commission’s data base found no authorization to operate a station on 151.605 MHz in Brooklyn, New York. The data base indicated that Rescue was licensed to operate base station WPTH937 on frequency 151.490 MHz.

3. On the next day, April 3, 2003, the agent again observed a radio signal on 151.605 MHz, conducted an inspection of the station, and advised Mr. Gordon that Rescue’s base station was operating on an unauthorized frequency of 151.605 MHz. On April 9, 2003, three Commission agents monitored transmissions on 151.605 MHz and once again observed radio transmissions on 151.605 MHz from Rescue’s base station in Brooklyn. Section 90.403(a)(2) of the Rules requires licensees of radio stations in the private land mobile radio services to “exercise such direction and control as is necessary to assure that all authorized facilities are employed only in a permissible manner.”

¹ 19 FCC Rcd 23557 (Enf. Bur. 2004).

² 47 C.F.R. § 90.403(a)(2).

4. On June 10, 2003, the New York Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”)³ in the amount of \$4,000 to Mr. Gordon for Rescue’s apparent willful and repeated violation of Section 90.403(a)(2) of the Rules. On behalf of Rescue, Mr. Gordon filed a response to the *NAL* in which he did not deny that Rescue was operating on an unauthorized frequency on April 2 or 3, 2003, but challenged the Commission’s finding that Rescue was operating on an unauthorized frequency on April 9, 2003. He also detailed his efforts to correct the violation. On December 3, 2004, the Bureau rejected his arguments and issued a *Forfeiture Order* finding Rescue liable for a \$4,000 forfeiture as proposed by the *NAL*. On December 17, 2004, Mr. Gordon filed a Petition for Reconsideration⁴ restating the same arguments he made in his response to the *NAL*.

III. DISCUSSION

5. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”), Section 1.80 of the Rules,⁵ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁶ In examining Mr. Gordon’s Petition for Reconsideration, 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 any other such matters as justice may require.⁷

6. In his Petition for Reconsideration, Mr. Gordon repeated his previous argument that upon being told by the Commission agents that he was operating on an unauthorized frequency, he contacted the appropriate technical service, which corrected the problem the same day. He concluded that he thought his action resolved the matter, and that Rescue was no longer in violation of the Commission rules.⁸ As explained in the *Forfeiture Order*, Mr. Gordon’s purported remedial measures do not warrant mitigation when they occur after the Commission’s notification of the violation. The Commission repeatedly has stated that corrective action taken to come into compliance with Commission rules or policy after notification of the violation is expected and does not cancel, nullify or mitigate the prior violation.⁹ Mr. Gordon offers no further mitigating evidence or arguments on behalf of Rescue.

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332380021 (Enf. Bur., New York Office, released June 10, 2003).

⁴ Mr. Gordon filed another Petition for Reconsideration dated December 10, 2004, in response to the *Forfeiture Order*. It was not postmarked, however, until March 21, 2005, and was not received at the Commission until March 28, 2005. Documents are considered to be filed on the date of receipt at the location designated by the Commission. See 47 C.F.R. § 1.7. Further, the deadline for filing a Petition for Reconsideration was thirty days after public notice of the *Forfeiture Order* issued on December 3, 2004. See 47 U.S.C. §405(a), 47 C.F.R. §1.106(f). Accordingly, this document was filed too late to be considered. Even if it had been considered on the merits, however, our outcome would remain the same.

⁵ 47 U.S.C. § 503(b) and 47 C.F.R. §1.80.

⁶ *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).

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ Petition for Reconsideration, p. 1.

⁹ See *Executive Broadcasting Corp.*, 3 FCC 2d 699, 700 (1966); *Radio Station KGVV, Inc.*, 42 FCC 2d 258, 259 (1973); *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994); *AT&T Wireless Services, Inc.*, 17 FCC Rcd 7891 (2002), *forfeiture ordered*, 17 FCC Rcd 21866, 21875-76 ¶¶ 26-28 (2002); and *Callais Cablevision, Inc.*, 17 FCC Rcd 22626, 22629 (2002).

7. Accordingly, we affirm the *Forfeiture Order's* determination that Rescue willfully and repeatedly violated Section 90.403(a)(2) of the Rules and that a forfeiture of four thousand dollars (\$4,000) is warranted.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act and Section 1.106 of the Rules,¹⁰ the Petition for Reconsideration **IS DENIED**.

9. **IT IS FURTHER ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹¹ Mr. Joslyn Gordon, as owner of Rescue Car Service, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of four thousand dollars (\$4,000) for willful and repeated violation of Section 90.403(a)(2) of the Rules.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 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 may be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12th Street, SW, Room 1-A625, Washington, D.C. 20554.¹³

11. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail, return receipt requested, to Joslyn Gordon, Rescue Car Service, Inc., 264A Troy Avenue, Brooklyn, New York 11213.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau

¹⁰ 47 U.S.C. § 405 and 47 C.F.R. § 1.106.

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

¹² 47 U.S.C. § 504(a).

¹³ See 47 C.F.R. § 1.1914.