

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

In the Matter of	)	
	)	
Discovery Transportation	)	File Number: EB-06-NY-047
Licensee of WQCK981	)	
New York, NY	)	NAL/Acct. No: 200732380008
	)	
	)	FRN: 0014 6150 58

**FORFEITURE ORDER**

**Adopted: January 28, 2008**

**Released: January 30, 2008**

By the Acting Regional Director, Northeast Region, Enforcement Bureau:

**I. INTRODUCTION AND BACKGROUND**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of four thousand dollars (\$4,000) to Discovery Transportation (“*Discovery*”) for willfully and repeatedly violating Section 1.903(a) of the Commission’s Rules<sup>1</sup> by operating radio transmitting equipment on the frequency 463.350 MHz from an unauthorized location with an antenna that exceeded the authorized height.

2. On February 26, 2007, the Commission’s New York Field Office issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) in the amount of \$4,000 to Discovery for operating radio transmission equipment on 463.350 MHz from an unauthorized location with an antenna that exceeded the authorized height.<sup>2</sup> Discovery does not dispute the findings in the *NAL*, but requests a cancellation of the forfeiture based on the corrective actions it took after the inspection by the FCC agents and the fact that the proposed forfeiture will place a “heavy burden” on Discovery’s small business.

**II. DISCUSSION**

3. We decline to cancel or reduce the forfeiture based on the actions Discovery took after the agent’s inspection. The Commission consistently has held that corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.<sup>3</sup>

---

<sup>1</sup> 47 C.F.R. § 1.903(a).

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732380008 (Enf. Bur., New York Office, released February 26, 2007) (“*NAL*”). The New York Office also admonished Discovery in the *NAL* for failing to transmit its call sign identification at least once every fifteen minutes, as required by 90.425(a) of the Rules.

<sup>3</sup> See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994); see also *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21871-76 (2002).

4. We likewise decline to reduce or cancel the forfeiture based on the alleged “heavy burden” it will place on Discovery. As noted in the *NAL*, the Commission does not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless such claim is supported by: (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 respondent's current financial status.<sup>4</sup> Despite this explicit direction, Discovery has provided no documentation to support its claim that payment of the forfeiture will be burdensome.

### III. ORDERING CLAUSES

5. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),<sup>5</sup> and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules,<sup>6</sup> Discovery Transportation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$4,000 for willfully and repeatedly violating Section 1.903(a) of the Rules.

6. 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.<sup>7</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to 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, 1A625, 445 12th Street, S.W., Washington, D.C. 20554.<sup>8</sup>

---

<sup>4</sup> See *NAL* para. 17; See also *Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines (“Forfeiture Policy Statement”)*, 12 FCC Rcd 17087, 17106-07 (1997), *recon. denied*, 15 FCC Rcd 3030 (1999).

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>7</sup> 47 U.S.C. § 504(a).

<sup>8</sup> See 47 C.F.R. § 1.1914.

7. **IT IS FURTHER ORDERED** that a copy of this *Forfeiture Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Discovery Transportation at its address of record.

**FEDERAL COMMUNICATIONS COMMISSION**

G. Michael Moffitt  
Acting Regional Director, Northeast Region  
Enforcement Bureau