

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

In the Matter of
Paisa 2 Car and Limousine Service, Inc.
Licensee of WQEQ855
Woodside, NY
File No.: EB-09-NY-0213
NAL/Acct. No: 201032380002
FRN: 0014768220

MEMORANDUM OPINION AND ORDER

Adopted: October 20, 2011

Released: October 21, 2011

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order ("MO&O"), issued pursuant to section 405 of the Communications Act of 1934, as amended ("Act"), and section 1.106 of the Commission's rules, we grant in part and deny in part the Petition for Reconsideration ("Petition") filed on July 15, 2010, by Paisa 2 Car and Limousine Service, Inc. ("Paisa"), the licensee of private land mobile station WQEQ855, in Woodside, New York. Paisa seeks reconsideration of a Forfeiture Order imposing a \$4,000 forfeiture for Paisa's willful and repeated operation on an unauthorized frequency in violation of section 1.903(a) of the Commission's rules ("Rules"). For the reasons set forth below, the Petition is granted in part and denied in part.

II. BACKGROUND

2. On October 5, 2009, the Enforcement Bureau's New York Office issued to Paisa a Notice of Apparent Liability for Forfeiture ("NAL") in the amount of \$4,000, finding that Paisa apparently willfully and repeatedly violated section 1.903(a) of the Rules by operating a base station and mobile stations on an unauthorized frequency. Paisa did not file a response to the NAL and on June 18, 2010, the Enforcement Bureau's Northeast Region issued a Forfeiture Order affirming the findings in the NAL and assessing a \$4,000 forfeiture.

1 47 U.S.C. § 405.

2 47 C.F.R. § 1.106.

3 Paisa Car Service, Petition for Reconsideration (filed July 15, 2010).

4 47 C.F.R. § 1.903(a).

5 Paisa 2 Car and Limousine Service, Inc., Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 201032380002 (Enf. Bur., New York Office, released Oct. 5, 2009).

6 Paisa 2 Car and Limousine Service, Inc., Forfeiture Order, 25 FCC Rcd 7498 (Northeast Region Enf. Bur. 2010).

3. In the Petition, Paisa claims that it never received the *NAL*, speculating that the *NAL* was mistakenly delivered to one of the other two businesses that are located at the same mailing address.<sup>7</sup> In support of this claim, Paisa submits documentation showing that two other businesses share Paisa's mailing address.<sup>8</sup> As to the underlying findings in the *NAL*, Paisa asserts that it did not know it was operating on an unauthorized frequency because the base station and mobile radios were programmed by Paisa's radio vendor.<sup>9</sup> Furthermore, Paisa requests a reduction or cancellation of the forfeiture based on its inability to pay.<sup>10</sup>

### III. DISCUSSION

4. A petition for reconsideration that relies on facts not previously presented to the designated authority will be entertained only if: (1) the designated authority (the Enforcement Bureau in this instance) determines that consideration of the new facts is required to serve the public interest; (2) the petition relies on facts that relate to events that occurred or circumstances that have changed since the last opportunity to present such matters; or (3) the petition relies on facts unknown to the petitioner until after his last opportunity to present such matters.<sup>11</sup> In light of the evidence submitted by Paisa in support of its claim that it did not receive the *NAL*, we find that the public interest warrants consideration of Paisa's Petition.

5. We decline to cancel the forfeiture based on Paisa's claim in its Petition that it did not know that it was operating on an unauthorized frequency. It is well established that administrative oversight or inadvertence is not a mitigating factor warranting cancellation or reduction of a forfeiture.<sup>12</sup> Paisa's claim that it relied on its radio vendor to program its base station and mobile radios does not provide grounds for cancellation or reduction because licensees are held responsible and accountable for the acts or omissions of their agents.<sup>13</sup>

6. Paisa also asserts that the forfeiture would pose a financial hardship and requests reduction or cancellation of the forfeiture on this basis. With regard to an individual's or entity's inability to pay, the Commission has determined that, in general, gross revenues are the best indicator of an ability to pay a forfeiture.<sup>14</sup> We have reviewed Paisa's submitted documentation and conclude that the forfeiture

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<sup>7</sup> Petition at 1.

<sup>8</sup> *Id.* The two other businesses are A&K Auto, Inc. and Genesis Auto Repairs and Body Shop, both of which are located at 69-11 48<sup>th</sup> Avenue, Woodside, New York where Paisa's business also is located. The New York Office sent the *NAL* via regular mail and certified mail, return receipt requested. The signature on the certified mail return receipt was illegible.

<sup>9</sup> Petition at 1.

<sup>10</sup> *Id.*

<sup>11</sup> 47 C.F.R. §1.106(c).

<sup>12</sup> See *See, e.g., Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991)(stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance").

<sup>13</sup> See, e.g., *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64 (2002); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34, 35 (1991); *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972).

<sup>14</sup> See *PJB Communications of Virginia, Inc.*, Forfeiture Order, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, Forfeiture Order, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive (continued....))

should be reduced to \$500, based on its documented inability to pay the forfeiture amount imposed in the *Forfeiture Order*.

#### IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to section 405 of the Communications Act of 1934, as amended,<sup>15</sup> and section 1.106 of the Commission's rules,<sup>16</sup> that the Petition for Reconsideration filed by Paisa 2 Car and Limousine Service, Inc. **IS GRANTED IN PART AND DENIED IN PART**.

8. **IT IS ALSO ORDERED** that, pursuant to section 503(b) of the Act, and sections 0.111, 0.311, and 1.80(f)(4) of the Commission's rules,<sup>17</sup> Paisa 2 Car and Limousine Service, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five hundred dollars (\$500) for violations of section 1.903(a) of the rules.

9. 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 Memorandum Opinion and Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for enforcement pursuant to section 504(a) of the Act.<sup>18</sup> Payment of the forfeiture must be made by credit card, check, or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures. Paisa 2 Car and Limousine Service, Inc. shall also send electronic notification to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov) on the date said payment is made.

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where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation, Forfeiture Order, 15 FCC Rcd 8640 (2002)* (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

<sup>15</sup>47 U.S.C. § 405.

<sup>16</sup>47 C.F.R. § 1.106.

<sup>17</sup>47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>18</sup>47 U.S.C. § 504(a).

10. **IT IS FURTHER ORDERED** that this Memorandum Opinion and Order shall be sent by both regular mail and by certified mail, return receipt requested, to Paisa at 69-11 48<sup>th</sup> Avenue, Woodside, New York, 11377.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief, Enforcement Bureau