

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

In the Matter of)	
)	
Lakewood Transportation, LLC)	File No.: EB-FIELDNER-13-00007073
)	
Lakewood, New Jersey)	NAL/Acct. No.: 201432400001
)	
)	FRN: 0023117930

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: November 12, 2013

Released: November 12, 2013

By the District Director, Philadelphia Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Lakewood Transportation, LLC (Lakewood), Lakewood, New Jersey, apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934 (Act) and Section 1.903(a)–(b) of Commission’s rules (Rules)¹ by operating radio communications equipment on an unauthorized frequency. We conclude that Lakewood is apparently liable for a forfeiture in the amount of six thousand dollars (\$6,000).

II. BACKGROUND

2. On April 14, 2011, agents of the Enforcement Bureau’s Philadelphia Office (Philadelphia Office) inspected radio transmitting equipment operated by Lakewood at 111 Clifton Avenue, Unit 5, Lakewood, New Jersey (Lakewood Business Office). Lakewood operates a taxicab business and the radio transmitting equipment was used for dispatching taxicabs. The agents found that Lakewood was operating the radio transmitting equipment on the frequency 159.675 MHz without a license. On April 18, 2011, the Philadelphia Office issued a Notice of Unlicensed Operation (NOUO) to Lakewood for operating on 159.675 MHz without a license.²

3. On May 19, 2011, the Philadelphia Office received a response to the NOUO from Clasene Joseph, the sole owner of Lakewood, stating that he had applied for a license to operate a Private Land Mobile Radio Station for Lakewood’s radio dispatch service.³ On June 20, 2011, the Commission issued a Private Land Mobile Radio Station license (Call Sign WQNW564) authorizing Mr. Joseph to operate radio transmitting equipment on the frequency 160.0575 MHz in Lakewood, New Jersey. No further enforcement action was taken against Mr. Joseph or Lakewood with regard to the unlicensed operation on 159.675 MHz.

4. On March 1, 2013, in response to a complaint of unauthorized transmissions on 159.675 MHz in the Lakewood, New Jersey area, agents monitored transmissions on the frequency 159.675 MHz and, using radio direction finding techniques, determined that the transmissions were emanating from the Lakewood Business Office. The agents inspected the radio transmitting equipment at the Lakewood

¹ 47 U.S.C. § 301; 47 C.F.R. § 1.903(a)–(b).

² See *Lakewood Transportation*, Notice of Unlicensed Operation (Enf. Bur., Philadelphia Office rel. April 18, 2011).

³ Letter from Clasene Joseph to Philadelphia Office (May 19, 2011) (on file in EB-FIELDNER-13-00007073).

Business Office in the presence of Lakewood's dispatcher and confirmed that Lakewood was operating its dispatch service, which included a base station and mobile radios, on the frequency 159.675 MHz. The agent checked the FCC database and confirmed that neither Lakewood nor its owner, Clasene Joseph, has a license to operate on 159.675 MHz. Before the agents departed the Lakewood Business Office, the dispatch service was reprogrammed to operate on 160.0575 MHz, the frequency authorized under Mr. Joseph's license for Station WQNW564.

III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁴ Section 312(f)(1) of the Act defines "willful" as the "conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.⁵ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,⁶ and the Commission has so interpreted the term in the Section 503(b) context.⁷ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁸ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁹

A. Operation on an Unauthorized Frequency

6. The evidence in this case is sufficient to establish that Lakewood violated Section 301 of the Act and Section 1.903(a)–(b) of the Rules. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States, except under and in accordance with the Act and with a license issued by the Commission.¹⁰ Section 1.903(a) of the Rules requires that stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service and with a valid authorization granted by the Commission.¹¹ In addition, Section 1.903(b) provides that the holding of an

⁴ 47 U.S.C. § 503(b).

⁵ 47 U.S.C. § 312(f)(1).

⁶ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) ("This provision [inserted in Section 312] defines the terms 'willful' and 'repeated' for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,] . . . 'willful' means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. 'Repeated' means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be 'continuous' would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission's application of those terms").

⁷ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

⁸ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator's repeated signal leakage).

⁹ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, para. 9.

¹⁰ 47 U.S.C. § 301.

¹¹ 47 C.F.R. § 1.903(a).

authorization does not create any rights beyond the terms, conditions, and period specified in the authorization.¹² During the inspection on March 1, 2013, agents found that Lakewood operated its base station and mobile units on the frequency 159.675 MHz without a license. The license for Station WQNW564 that Mr. Joseph obtained for Lakewood's dispatch service only authorized operation on the frequency 160.0575 MHz. Therefore, based on the evidence before us, we find that Lakewood apparently willfully and repeatedly violated Section 301 of the Act and Section 1.903(a)–(b) of the Rules by operating its radio transmitting equipment on an unauthorized frequency.

B. Proposed Forfeiture Amount

7. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for using an unauthorized frequency is \$4,000.¹³ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, 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.¹⁴ Consequently, the base forfeiture amount is subject to adjustment. Lakewood was aware that it was permitted to operate only on an authorized frequency, as evidenced by the NOUO issued on April 18, 2011 and Lakewood's subsequent application for a license to operate on the frequency 160.0575 MHz. Thus, we find that an upward adjustment to the forfeiture amount of \$2,000 is warranted.¹⁵ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Lakewood is apparently liable for a forfeiture in the amount of \$6,000.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Commission's rules, Lakewood Transportation, LLC, is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of six thousand dollars (\$6,000) for violations of Section 301 of the Act and Section 1.903(a)–(b) of the Rules.¹⁶

9. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Lakewood Transportation, LLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Lakewood Transportation, LLC, shall also send electronic notification on the date said payment is made to NER-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁷ When completing the FCC Form 159, enter the Account Number in block

¹² 47 C.F.R. § 1.903(b).

¹³ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recons. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹⁴ 47 U.S.C. § 503(b)(2)(E).

¹⁵ See, e.g., *Pacific Spanish Network, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 2170 (Enf. Bur. 2011) (proposing \$4,000 base forfeiture amount and upward adjustment of \$2,000 where licensee's knowledge of unauthorized operation was evidenced by a warning letter and two license applications).

¹⁶ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 1.903(a)–(b).

¹⁷ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

11. Any request to make full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁸ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

12. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.¹⁹ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Northeast Region, Philadelphia Office, One Oxford Valley Building, Suite 404, 2300 East Lincoln Highway, Langhorne, Pennsylvania 19047, and include the NAL/Acct. No. referenced in the caption. Lakewood Transportation, LLC, also shall e-mail the written response to NER-Response@fcc.gov. 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.

¹⁸ See 47 C.F.R. § 1.1914.

¹⁹ 47 C.F.R. §§ 1.16, 1.80(f)(3).

13. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and first class mail to Lakewood Transportation, LLC, at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

David C. Dombrowski
District Director
Philadelphia Office
Northeast Region
Enforcement Bureau