

Federal Communications Commission

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

In the Matter of)	
)	File No. EB-03-NY-064
Esperanza Gonzales d.b.a. Ivette Car Service)	
KNNR573)	NAL/Acct. No. 200432380001
Brooklyn, NY)	
)	FRN: 0008 9882 06

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 24, 2003

By the District Director, New York Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Esperanza Gonzales d.b.a. Ivette Car Service ("Ivette"), apparently violated Section 1.903(a) of the Commission's Rules (the "Rules"),¹ by operating a base station transmitter on an unauthorized frequency of 151.635 MHz, and mobile units on an unauthorized frequency of 155.635 MHz. We conclude that Ivette is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000).

II. BACKGROUND

2. On May 16, 2003, a Commission agent, using a mobile direction finding vehicle, monitored the frequency 151.635 MHz in Brooklyn, NY, to follow-up a previous investigation concerning operation on unauthorized frequencies in the Private Land Mobile Radio Services. The agent determined that Ivette, located at 2958 Fulton Street, Brooklyn, NY 11207, operated a base transmitter on a frequency of 151.635 MHz. There was no evidence of a Commission authorization for Ivette to operate a base station on 151.635 MHz in Brooklyn, NY.

3. On May 19, 2003, Commission agents, using a mobile direction finding vehicle, monitored the frequency 151.635 MHz, and again determined that Ivette, located at 2958 Fulton Street, Brooklyn, NY 11207, operated a base station on a frequency of 151.635 MHz. The agents conducted a station inspection with Ivette's manager, Odilio Bautist, and advised him that Ivette was operating a base transmitter on an unauthorized frequency of 151.635 MHz, and mobile units on an unauthorized frequency of 155.635 MHz. There was no evidence of a Commission authorization for Ivette to operate mobile units on 155.635 MHz in Brooklyn, NY.

¹ 47 C.F.R. § 1.903(a).

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4. On May 20, 2003, a Commission agent, using a mobile direction finding vehicle, monitored the frequencies 151.635 and 155.635 MHz, and again determined that Ivette operated a base transmitter on a frequency of 151.635 MHz and mobile units on a frequency of 155.635 MHz.

III. DISCUSSION

5. 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 as set forth in this title and with a valid authorization granted by the Commission under the provisions of this part.” In this connection, licensees shall exercise such direction and control as to assure that the transmitter is being operated in a permissible manner. A review of Commission’s records showed that Esperanza Gonzales d.b.a. Ivette Car Service was granted authority under its license, KNNR573, to operate one base station and 25 mobile units on a frequency of 151.775 MHz. Agents observed the base station operating on 151.635 MHz and mobile units operating on 155.635 MHz.

6. Based on the evidence before us, we find that Ivette operated a base station on the unauthorized frequency of 151.635 MHz on May 16, May 19, and May 20 2003, and mobile units on the unauthorized frequency of 155.635 MHz on May 19, and May 20, 2003, in willful² and repeated³ violation of Section 1.903(a) of the Rules.

7. *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) (“*Forfeiture Policy Statement*”),⁴ sets the base forfeiture amount for using an unauthorized frequency at \$4,000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended,⁵ (“Act”) which include 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. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a four thousand dollar (\$4,000) monetary forfeiture is warranted.

² Section 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).

³Section 312(f)(2), which also applies to Section 503(b), provides: [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.

⁴47 C.F.R. § 1.80.

⁵47 U.S.C. § 503(b)(2)(D).

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IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁶ and Sections 0.111, 0.311 and 1.80 of the Rules,⁷ Ivette is hereby NOTIFIED of their APPARENT LIABILITY FOR A FORFEITURE in the amount of four thousand dollars (\$4,000) for willfully and repeatedly violating Section 1.903(a) of the Rules.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Ivette 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 may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200432380001 and FRN: 0008 9882 06.

11. Any response to this NAL must be mailed to Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Washington, D.C. 20554, and MUST INCLUDE THE NAL/Acct. No. 200432380001.

12. 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.

13. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

14. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Spectrum Enforcement Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to

⁶47 U.S.C. § 503(b).

⁷47 C.F.R. §§ 0.111, and 0.311.

⁸ See 47 C.F.R. § 1.1914.

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respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

15. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Esperanza Gonzales d.b.a. Ivette Car Service, 2958 Fulton Street, Brooklyn, NY 11207.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel
District Director
New York Office

Attachment A – Condensed List of Small Entities, October 2002