

Federal Communications Commission

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

In the Matter of)	
)	File No. EB-03-NY-157
)	
Parkway Luxury Ride Inc.)	NAL/Acct. No. 200432380010
Mt. Vernon, NY)	
)	FRN: 00101 1877 55

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 8, 2004

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

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Parkway Luxury Ride Inc. ("Parkway") has apparently violated Section 301 of the Communications Act of 1934 as amended, ("Act"),¹ by operating unlicensed radio transmitters on frequencies of 157.490 MHz and 155.265 MHz. We conclude that Parkway is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On August 29, 2003, the FCC New York Office received a complaint from a FCC licensed user of interference to the frequency 155.265 MHz.

3. On September 3, 2003, a Commission agent using a mobile direction finding vehicle, monitored the frequency, 155.265 MHz, and positively identified the source of transmissions to Parkway, located at 155 Mt. Vernon Avenue, Mt. Vernon, NY 10550. There was no evidence of a Commission authorization for Parkway to operate this station on 155.265 MHz in Mt. Vernon, NY.

4. On September 4, 2003, a Commission agent again monitored the frequency 155.265 MHz and positively identified the source of transmissions to Parkway located at 155 Mt. Vernon Avenue, Mt. Vernon, NY 10550. The agent advised the dispatcher on duty that Parkway was operating their base station and mobile units on an unauthorized frequency of 155.265 MHz. There was no evidence of a Commission authorization for Parkway to operate a base station and mobile units on 155.265 MHz in Mt. Vernon, NY.

¹ 47 U.S.C. § 301.

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5. On September 5, 2003, Commission agents monitored the frequency 155.265 MHz and positively identified transmissions to Parkway. The agents, conducted a station inspection with Parkway's owner Henry Mensah present, and confirmed that the base station was operating on a frequency of 155.265 MHz. The agents advised Mr. Mensah that a station license is required for station operation. There was no evidence of a Commission authorization for Parkway to operate a base station and mobile units on 155.265 MHz in Mt. Vernon, NY.

6. On January 2, 2004, a Commission agent, using a mobile direction-finding vehicle, monitored the frequency, 157.490 MHz, in Mt. Vernon, NY in connection with an investigation concerning the use of unauthorized frequencies in the Private Land Mobile Radio Services. The agent positively identified the source of transmissions on 157.490 MHz to Parkway, located at 155 Mt. Vernon Avenue, Mt. Vernon, NY 10550. There was no evidence of a Commission authorization for Parkway to operate this station on 157.490 MHz in Mt. Vernon, NY.

7. On January 7, 2004, Commission agents using a mobile direction finding vehicle, monitored the frequency, 157.490 MHz and positively identified the source of transmissions to Parkway, located at 155 Mt. Vernon Avenue, Mt. Vernon, NY 10550. The agents conducted a station inspection with Parkway's dispatcher and observed the base transmitter in use. The agents advised the dispatcher that Parkway was operating on an unauthorized frequency of 157.490 MHz. There was no evidence of a Commission authorization for Parkway to operate this station on 157.490 MHz in Mt. Vernon, NY.

8. On January 8, 2004, a Commission agent using a mobile direction finding vehicle, monitored the frequency, 157.490 MHz, in Mt. Vernon, NY, and positively identified the source of transmissions to Parkway, located at 155 Mt. Vernon Avenue, Mt. Vernon, NY 10550. There was no evidence of a Commission authorization for Parkway to operate this station on 157.490 MHz in Mt. Vernon, NY.

III. DISCUSSION

9. Section 301 of the Acts sets forth generally 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 granted under the provisions of the Act.

10. Based on the evidence before us, we find that Parkway operated a base station and mobile units on a frequency of 155.265 MHz on September 3, September 4, and September 5, 2003; and on a frequency of 157.490 MHz on January 2, January 7 and January 8, 2004, in willful² and repeated³ violation

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.

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of Section 301 of the Act.

11. *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 operation without an instrument of authorization at \$10,000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,⁵ 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 ten thousand dollar (\$10,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁶ and Sections 0.111, 0.311 and 1.80 of the Commission's Rules⁷, Parkway is hereby NOTIFIED of their APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willfully and repeatedly violating Section 301 of the Act.

13. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Parkway SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

14. 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. 200432380010 and FRN: 00101 1877 55.

15. 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. 200432380010.

16. 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

⁴47 C.F.R. § 1.80.

⁵47 U.S.C. § 503(b)(2)(D).

⁶47 U.S.C. § 503(b).

⁷47 C.F.R. §§ 0.111, and 0.311.

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current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. 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

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

19. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Parkway Luxury Ride, Inc., 155 Mt. Vernon Avenue, Mt. Vernon, NY 10550.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel
District Director
New York Office

Attachment A – FCC List of Small Entities, October 2002

⁸ See 47 C.F.R. § 1.1914.