

Federal Communications Commission

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

In the Matter of)	
)	File No. EB-04-NY-018
Caprice Car Service II)	
WPDF849)	NAL/Acct. No. 200432380014
Flushing, NY)	
)	FRN: 0005 5586 97

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: June 14, 2004

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

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Caprice Car Service II ("Caprice") has apparently violated Section 1.903(a) of the Commission's Rules (the "Rules")¹, by operating mobile units on an unauthorized frequency of 159.950 MHz. We conclude that Caprice is apparently liable for forfeiture in the amount of four thousand dollars (\$4,000).

II. BACKGROUND

2. On or about January 29, 2004, the FCC New York Office received a complaint from a FCC licensed user of interference to the frequency 154.490 MHz. The complaint alleged that Caprice located at 135-16 37th Avenue, Flushing, NY 11354, was responsible for the interference.

3. On February 4, 2004, a Commission agent conducted an inspection of Caprice and determined that Caprice, located at 135-16 37th Avenue, Flushing, NY 11354, operated mobile units on a frequency of 159.950 MHz. Caprice's base station was found to be operating on the licensed frequency 154.490 MHz. The agent advised the dispatcher on duty that Caprice's mobile units were operating on an unauthorized frequency of 159.950 MHz. There was no evidence of a Commission authorization for Caprice to operate mobile units on 159.950 MHz in Flushing, NY.

4. On February 5, 2004, Commission agents, using a mobile direction finding vehicle, monitored the frequencies 154.490 MHz and 159.950 MHz in Flushing, NY, and again determined that Caprice, located at

¹ 47 C.F.R. § 1.903(a).

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135-16 37th Avenue, Flushing, NY 11354, operated mobile units on a frequency of 159.950 MHz. The agents advised Hernan Cardenas, owner of Caprice that the mobile units were operating on an unauthorized frequency of 159.950 MHz. There was no evidence of a Commission authorization for Caprice to operate mobile units on 159.950 MHz in Flushing, NY.

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, and with a valid authorization granted by the Commission. A review of Commission's records showed that Caprice was granted authority under its license, WPDF849, to operate a base station and 40 mobile units on a frequency of 151.490 MHz, and a base station and 20 mobile units for the frequency of 154.490 MHz. Agents observed mobile units operating on 159.950 MHz.

6. Based on the evidence before us, we find that, Caprice willfully² and repeatedly³ violated Section 1.903(a) of the Rules by operating mobile units on February 4, 2004, and February 5, 2004, on an unauthorized frequency of 159.950 MHz.

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.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁶ and Sections 0.111, 0.311 and 1.80 of the Rules⁷, Caprice is hereby NOTIFIED of their APPARENT LIABILITY FOR A

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).

³ Section 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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FORFEITURE in the amount of four thousand dollars (\$4,000) for willful and repeated violations of 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, Caprice 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. 200432380014 and FRN: 0005 5586 97.

11. Any response to this NAL must be mailed to Federal Communications Commission, New York Office, 201 Varick Street, New York, NY 10014, and MUST INCLUDE THE NAL/Acct. No. 200432380014.

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 Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Washington DC 20554. 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.

⁶ 47 U.S.C. § 503(b)

⁷ 47 C.F.R. §§ 0.111, and 0.311.

⁸ See 47 C.F.R. § 1.1914.

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15. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Caprice Car Service II, 135-16 37th Avenue, Flushing, NY 11354.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel
District Director
New York Office

Attachment A – FCC List of Small Entities, October 2002