

**Federal Communications Commission**

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

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

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Released: October 5, 2009

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 Paisa 2 Car and Limousine Service, Inc., ("Paisa"), the licensee of private land mobile station WQEQ855, in Woodside, NY, apparently willfully and repeatedly violated Section 1.903(a) of the Commission's Rules ("Rules")<sup>1</sup> by operating a base station and mobile stations on an unauthorized frequency, thereby, failing to use and operate the station only in accordance with the rules. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>2</sup> that Paisa is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000).

**II. BACKGROUND**

2. On June 15, 2009, the New York Office received a complaint from a licensee about co-channel interference from a car service operating on the Maritime frequency 157.425 MHz in Queens County, New York.

3. On June 16 and 18, 2009, an agent with the Commission's New York Office monitored the frequency 157.425 MHz in New York, New York and detected a car service base station operating on the frequency 157.420 MHz in Queens County, New York and communicating to mobile stations on the same frequency.

4. On June 17 and 19, 2009, an agent with the Commission's New York Office monitored the frequency 157.420 MHz in Queens County, New York and determined, using a mobile direction finding vehicle, that Paisa was operating a base station and mobile stations on the unauthorized frequency 157.420 MHz at 69-11 48<sup>th</sup> Avenue, Woodside, NY. The agent checked FCC databases and found no evidence of a Commission authorization for Paisa to operate on 157.42 MHz from that location.

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<sup>1</sup> 47 C.F.R. § 1.903(a).

<sup>2</sup> 47 U.S.C. § 503(b).

5. On June 22, 2009, agents with the Commission's New York Office again monitored 157.42 MHz in Queens County, New York, and determined that Paisa continued to operate a base station and mobile stations on the unauthorized frequency 157.42 MHz at 69-11 48<sup>th</sup> Avenue. The agents then proceeded to conduct an inspection at Paisa's car service and confirmed that the base station transmitter frequency was 157.42 MHz. When the agents asked to see a license, the owner Francisco Munoz showed the agents the license for WQEQ855, which authorizes base and mobile stations to transmit on the frequency 160.05 MHz. Although Mr. Munoz claimed that he did not know why the base station and mobile radios were operating on the unauthorized frequency 157.42 MHz, he specifically stated to the agents that drivers who want to drive for Paisa ask him what frequency to program into their radios.<sup>3</sup>

### III. DISCUSSION

6. 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. The term "willful" as used in Section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>4</sup> The term "repeated" means the commission or omission of such act more than once or for more than one day.<sup>5</sup>

7. 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. Section 1.903(b) further provides that the "holding of an authorization does not create any rights beyond the terms, conditions, and period specified in the authorization." On June 17, 19, and 22, 2009, a Commission agent determined that Paisa was operating its base station and mobile radios on an authorized frequency of 157.420 MHz. Because Paisa, by its own admission, was responsible for informing independent drivers of what frequency to program into their mobile radios, we find that the violation was willful. The violation continued for more than one day; therefore, it was repeated. Based on the evidence before us, we find that Paisa apparently willfully and repeatedly violated Section 1.903(a) of the Rules by operating its base station and mobile radios on a frequency not authorized on the WQEQ855 license.

8. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines ("Forfeiture Policy Statement")*, and Section

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<sup>3</sup> After conducting the inspection on June 22, 2009, agents spoke to a representative from the radio vendor that programmed the base station and mobile radio and he reported that the frequency was changed to the authorized frequency of 160.05 MHz. On June 24, 2009, the New York Office received a telephone call from the complainant who stated that the interfering car service had stopped transmitting on 157.425 MHz.

<sup>4</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under 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 or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>5</sup> 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."

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1.80 of the Rules, the base forfeiture amount for using an unauthorized frequency is \$4,000.<sup>6</sup> In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.<sup>7</sup> Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude Paisa is apparently liable for a (\$4,000) forfeiture.

### IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Paisa 2 Car and Limousine Service., Inc., is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of four thousand dollars (\$4,000) for violation of Sections 1.903(a) and 1.903(b) of the Rules.<sup>8</sup>

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

11. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number 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[s] 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. If payment is made, Paisa should send electronic notification on the date said payment is made to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov).

12. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, New York Office, 201 Varick Street, Suite 1151, New York, NY 10014, within thirty (30) days from the release date of this Notice of Apparent Liability for Forfeiture and must include the NAL/Acct. No. referenced in the caption.

13. 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

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<sup>6</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

<sup>7</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>8</sup> 47 C.F.R. §§ 503(b), 0.111, 0.311, 0.314, 1.80, 1.903(a), and 1.903(b).

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

14. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Paisa 2 Car and Limousine Service., Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel  
District Director  
New York Office  
Northeast Region  
Enforcement Bureau