

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

In the Matter of

Federal Express Corporation

Licensee of Station WQAS435
Bloomington, California)
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File Number: EB-06-LA-171

NAL/Acct. No. 200632900013
FRN: 0010662195

FORFEITURE ORDER

Adopted: May 2, 2007**Released: May 4, 2007**

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of four thousand dollars (\$4,000) to Federal Express Corporation ("Fed Ex"), for willful and repeated violation of Section 1.903(a) of the Commission's Rules ("Rules").¹ On August 17, 2006, the Enforcement Bureau's Los Angeles Office issued a *Notice of Apparent Liability for Forfeiture* ("NAL") in the amount of \$4,000 to Fed Ex after determining that Fed Ex apparently willfully and repeatedly operated on 460.250 MHz, a frequency not authorized by its license, WQAS435. In this *Order*, we consider Fed Ex's argument that it did not willfully or repeatedly operate in violation of the Rules.

II. BACKGROUND

2. On June 15, 2006, the Enforcement Bureau's Los Angeles Office received an interference complaint from the City of Riverside, California, Police Department, who reported that they had been receiving co-channel interference to their radio system licensed to operate on 460.250 MHz during early morning tactical operations for several weeks. Riverside Police also reported that they had previously used their own direction finding equipment and located the interference to the Fed Ex package distribution facility in nearby Bloomington, California. After locating the interference, Riverside Police Department personnel stated that they immediately contacted Fed Ex personnel, who agreed to stop operating and correct the problem. Several days later, however, the Riverside Police again noticed the interference on 460.250 MHz. The Riverside Police then contacted the FCC Enforcement Bureau's Los Angeles Office. A review of the Commission's records by the Los Angeles Office revealed that the Fed Ex license, WQAS435, did not include authorization for Fed Ex to operate on 460.250 MHz.

3. On June 23, 2006, during early morning hours, an agent from the Los Angeles Office used mobile direction finding techniques to locate radio operations from multiple portable transmitters operating on 460.250 MHz from within the Fed Ex facility in Bloomington. The communications were not identified by any call sign. After locating the stations, the Los Angeles agent interviewed Fed Ex personnel and managers. Fed Ex's Assistant Hub Manager recalled that after receiving the interference complaint from Riverside Police, he reported the problem to Fed Ex's radio service company. No follow-up apparently occurred between Fed Ex and the radio service company between June 15, 2006 and June 23, 2006. The Los Angeles agent measured the frequencies of several other radio channels programmed into the portable radios in use at the Fed Ex facility and discovered that, in addition to 460.250 MHz, four other channels were installed which were not authorized by the WQAS435 license. The Los Angeles

¹ 47 C.F.R. § 1.903(a).

agent informed Fed Ex's Local City Manager that the current license did not authorize the use of the 460.250 MHz, and the other four frequencies programmed into the radios. The Fed Ex Local City Manager stated that he would immediately stop using 460.250 MHz, and check to make sure all frequencies used in the future were authorized.

4. On August 17, 2006, the Los Angeles Office issued a *NAL* in the amount of \$4,000 to Fed Ex.² In the *NAL*, the Los Angeles Office found that Fed Ex apparently willfully and repeatedly violated Section 1.903(a) of the Rules by operating on 460.250 MHz, a frequency not authorized by its license, WQAS435. Fed Ex filed a response to the *NAL* on September 20, 2006 ("*Response*"). In its *Response*, Fed Ex argues that its violation was not willful, as Fed Ex was not made fully aware of the interference by the Riverside Police Department. Fed Ex also argues that the violation was not repeated, because Fed Ex was able to resolve the interference the same day it was notified of the interference by the Los Angeles FCC agent.

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,³ Section 1.80 of the Rules,⁴ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁵ In examining the *Response*, Section 503(b) of the Act requires that the Commission take into account 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.⁶

6. 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. The Fed Ex land mobile license, WQAS435, does not include an authorization to operate on 460.250 MHz in the Riverside, California area. On June 15, 2006, Riverside Police reported to the Los Angeles Office that they were continuing to experience co-channel interference to their operations on 460.250 MHz. Riverside Police further reported that they had previously located the interference to Fed Ex's operations in Bloomington, California, had contacted Fed Ex about the interference, and had been assured by Fed Ex personnel that they would cease operations on 460.250 MHz and that the interference would be resolved. On June 23, 2006, a Los Angeles FCC agent determined that Fed Ex was operating its land mobile station, WQAS435, on 460.250 MHz, a frequency not authorized by its license.

7. In its *Response*, Fed Ex does not dispute that it was operating on 460.250 MHz.⁷ Instead, Fed Ex focuses its response on the steps that it took to respond to the Riverside Police Department's complaint of interference. Fed Ex acknowledges that the Riverside Police Department advised it, in person, that they were experiencing co-channel interference and further acknowledges that Fed Ex was unable to determine the source of the interference, until the FCC agent followed up after receiving the complaint from the Riverside Police Department and determined that Fed Ex was using handheld radios

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200632900013 (Enf. Bur., Western Region, Los Angeles Office, released August 17, 2006).

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁶ 47 U.S.C. § 503(b)(2)(E).

⁷ Fed Ex relies on a September 18, 2006, letter from its radio service company, in which the company assures Fed Ex that its equipment is "always on licensed frequencies." However, the radio service company also acknowledges that it resolved the problem involving a single channel based on the information provided by the FCC agent.

on frequencies not authorized by its license. Fed Ex argues that its response to the complaint from the Riverside Police Department was immediate and therefore its violation was not willful. In addition, Fed Ex argues that when it was investigated by the Los Angeles FCC agent concerning the interference, days later, it immediately acted and the problem was permanently resolved that same day.

8. The *NAL* issued by the Los Angeles Office found that Fed Ex apparently violated Section 1.903(a) by operating on a frequency not authorized on its license. While the investigation by the Los Angeles Office was initiated because of the complaint of interference by the Riverside Police Department, Fed Ex was not found apparently liable for causing interference to the Riverside Police Department. Instead, Fed Ex was found apparently liable of operating its land mobile station, WQAS435, on 460.250 MHz, a frequency not authorized by that license. Fed Ex offers no evidence to dispute the Los Angeles Office finding that Fed Ex was operating WQAS435 on 460.250 MHz on June 15, 2006, and June 23, 2006. Fed Ex also does not dispute the Los Angeles Office's finding that Fed Ex personnel acknowledged continued operation on 460.250 MHz, even after the initial complaint from the Riverside Police Department. In addition, Fed Ex does not dispute the Los Angeles Office's finding that 460.250 MHz was programmed into the portable radios in use at the Fed Ex facility.

9. Because Fed Ex has offered no evidence to refute the finding that it repeatedly operated radios on a frequency not authorized by its license, we affirm the Los Angeles Office's findings. A licensee is required to operate on the frequency stated in its authorization.⁸ We acknowledge that Fed Ex immediately stopped operation on 460.250 MHz after the Los Angeles FCC agent informed Fed Ex that the operation was not authorized. However, as the Los Angeles Office noted in the *NAL*, a licensee is expected to correct errors when they are brought to the licensee's attention and that such correction is not grounds for a downward adjustment in the forfeiture.⁹

10. We have examined the *Response* to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Fed Ex willfully and repeatedly violated Section 1.903(a) of the Rules. Considering the entire record and the factors listed above, we find that neither reduction nor cancellation of the proposed \$4,000 forfeiture is warranted.

IV. ORDERING CLAUSES

11. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Federal Express Corporation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$4,000 for willfully and repeatedly violating Section 1.903(a) of the Rules.¹⁰

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.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/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire

⁸ *Dominic DeNaples*, 19 FCC Rcd 12303 (EB 2004).

⁹ *AT&T Wireless Services, Inc.* 17 FCC Rcd 21866, 21871-76 (2002).

¹⁰ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 1.903(a).

¹¹ 47 U.S.C. § 504(a).

transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911- 6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.¹²

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Fed Ex Corporation, at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

¹² See 47 C.F.R. § 1.1914.