

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

In the Matter of)	
)	File No. EB-06-SE-181
Visiplex, Inc.)	NAL/Acct. No. 200932100019
Licensee of Stations WPJU326 and WQBF524)	FRN # 0017200742
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: December 29, 2008

Released: January 2, 2009

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture and Order*, we find Visiplex, Inc. (“Visiplex”),¹ licensee of Private Land Mobile Radio Service Stations WPJU326 and WQBF524, apparently liable for a forfeiture in the amount of twelve thousand dollars (\$12,000) for operating its stations in a manner inconsistent with the terms its authorizations, in apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended, (“Act”)² and Section 1.903(a) of the Commission’s Rules (“Rules”).³

II. BACKGROUND

2. In 2001, Visiplex was granted a nationwide PLMRS license under call sign WPJU326 for mobile operations on frequencies 464.600 MHz, 464.625 MHz, 464.650 MHz, 464.700 MHz, and 464.725 MHz with an output power and effective radiated power of 100 watts.⁴ In 2004, Visiplex was granted a nationwide PLMRS license under call sign WQBF524 for mobile operations on frequencies 467.750 MHz, 467.775 MHz, 467.800 MHz, 467.850 MHz, 467.875 MHz, and 467.900 MHz with an output power and effective radiated power of 2 watts.⁵ Visiplex operates wireless synchronized clock radio systems for its customers under these nationwide licenses.

3. The Enforcement Bureau received a complaint alleging that Visiplex was operating its wireless synchronized clock radio systems at permanent fixed locations, notwithstanding that its licenses only authorize mobile operations. The complaint also alleged that Visiplex’s systems were operating at power levels in excess of its authorized power limits. On August 15, 2007, the Spectrum Enforcement Division of the Enforcement Bureau (“Bureau”) sent a Letter of Inquiry (“LOI”) to Visiplex requesting

¹ On March 13, 2008, the authorization for Station WPJU326 was assigned from Visiplex Technologies, Inc. to Visiplex, Inc., and on April 15, 2008, the authorization for Station WQBF524 was assigned from Visiplex Technologies, Inc. to Visiplex, Inc. See File Nos. 0003358356 and 0003381924. For convenience, we will refer to both entities as “Visiplex.”

² 47 U.S.C. § 301.

³ 47 C.F.R. § 1.903(a).

⁴ See File No. 0001519167.

⁵ See File No. 0001845730.

that the company respond to the allegations raised by the complaint.⁶ In its response dated September 14, 2007, Visiplex asserts that it was unaware that its license specified mobile operations.⁷ Visiplex explains that when it originally filed for its licenses with the Personal Communications Industry Association (“PCIA”),⁸ it specifically requested fixed location licenses.⁹ Visiplex further states that after receiving the LOI, it contacted PCIA for clarification and only then did PCIA explain that the licenses are for mobile equipment. Finally, Visiplex indicates that its transmitters used under call sign WPJU326 operate at or below its authorized power limit.

4. On February 25, 2008, the Bureau sent Visiplex a follow-up LOI.¹⁰ In its March 18, 2008 response,¹¹ Visiplex provides documentation indicating that its transmitters used under call sign WQBF524 operate with an output power of “2 or 4 watts.”¹²

III. DISCUSSION

A. Operation at Variance with Authorizations

5. Section 301 of the Act and Section 1.903(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by a wireless radio station except under, and in accordance with, a Commission granted authorization.¹³ Visiplex acknowledges that it operated its wireless synchronized clock radio systems under call signs WPJU326 and WQBF524 at permanent fixed locations, rather than mobile locations as authorized in its licenses. Accordingly, we find that Visiplex apparently willfully¹⁴ and repeatedly¹⁵ operated Stations WPJU326 and WQBF524 at

⁶ See Letter from Ricardo Durham, Senior Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Sam Agam, President, Visiplex Technologies, Inc. (August 15, 2007).

⁷ See Letter from David S. Grosky, V.P. of Legal Affairs, Visiplex Technologies, Inc., to Ricardo Durham, Senior Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (September 14, 2007) (“LOI Response”).

⁸ PCIA is an industry association which performs frequency coordination, FCC license filing, and other services for its member companies.

⁹ LOI Response at 1. In support of its assertion that it specifically requested fixed location licenses, Visiplex provides a partial copy of an application which it apparently submitted to PCIA for the authorization ultimately granted under call sign WQBF524. Although Schedule D of this application indicates that the operation will be at a fixed location, Schedule H indicates that the applicant is requesting mobile operations. *Id.* at Attachment.

¹⁰ See Letter from Ricardo Durham, Senior Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Sam Agam, President, Visiplex Technologies, Inc. (February 25, 2008).

¹¹ Letter from David S. Grosky, V.P. of Legal Affairs, Visiplex Technologies, Inc., to Ricardo Durham, Senior Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (March 18, 2008).

¹² *Id.* at Attachment.

¹³ 47 U.S.C. § 301; 47 C.F.R. § 1.903(a).

¹⁴ Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”).

permanent fixed locations in violation of Section 301 of the Act and Section 1.903(a) of the Rules.

6. Additionally, the license for Station WQBF524 authorizes an output power and effective radiated power of 2 watts. The documentation provided by Visiplex, however, indicates that the transmitters used under call sign WQBF524 operate with an output power of “2 or 4 watts.” Accordingly, we find that Visiplex apparently willfully¹⁶ and repeatedly¹⁷ operated Station WQBF524 at a higher than authorized power in violation of Section 301 of the Act and Section 1.903(a) of the Rules.

B. Proposed Forfeiture

7. Under Section 503(b)(1)(B) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹⁸ To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom such notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.¹⁹ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.²⁰ We conclude under this standard that Visiplex is apparently liable for forfeiture for its apparent willful and repeated violations of Section 301 of the Act and Section 1.903(a) of the Rules.

8. The Commission’s *Forfeiture Policy Statement*²¹ and Section 1.80(b) of the Rules²² establish a base forfeiture amount of four thousand dollars (\$4,000) for construction or operation at an unauthorized location. Visiplex concedes that it operated its wireless synchronized clock radio systems under call signs WPJU326 and WQBF524 at permanent fixed locations, rather than mobile locations as authorized in its licenses. We find that Visiplex’s operation of each of these stations at permanent fixed

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¹⁵ Section 312(f)(2) of the Act, which also applies to forfeitures assessed pursuant to Section 503(b) of the Act, provides that “[t]he term ‘repeated,’ ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2). See *Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362 (2001); *Southern California*, 6 FCC Rcd at 4388.

¹⁶ Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”).

¹⁷ Section 312(f)(2) of the Act, which also applies to forfeitures assessed pursuant to Section 503(b) of the Act, provides that “[t]he term ‘repeated,’ ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2). See *Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362 (2001); *Southern California*, 6 FCC Rcd at 4388.

¹⁸ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

¹⁹ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

²⁰ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002).

²¹ See *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*”).

²² 47 C.F.R. § 1.80(b)(4), Note to Paragraph (b)(4): *Section I. Base Amounts for Section 503 Forfeitures*.

locations is a separate violation, subject to a separate proposed forfeiture of \$4,000. We accordingly conclude that Visiplex is apparently liable for a total proposed forfeiture of \$8,000 for these violations.

9. The Commission's *Forfeiture Policy Statement*²³ and Section 1.80(b) of the Rules²⁴ also establish a base forfeiture amount of four thousand dollars (\$4,000) for exceeding power limits. The documentation submitted by Visiplex indicates that the transmitters used under call sign WQBF524 operated in excess of its authorized power limit. We therefore find Visiplex apparently liable for a \$4,000 forfeiture for operating under call sign WQBF524 in excess of its authorized power limit.

10. Accordingly, we conclude that Visiplex is apparently liable for a total forfeiture of \$12,000 for operating at variance from the terms of its authorizations in apparent willful and repeated violation of Section 301 of the Act and Section 1.903(a) of the Rules.

11. Visiplex asserts that it was unaware that the licenses for Stations WPJU326 and WQBF524 authorized only mobile operations. Visiplex explains that when it originally filed for its licenses with the PCIA, it specifically requested fixed location licenses. As a Commission licensee, however, Visiplex is charged with the responsibility of knowing and complying with the terms of its authorizations, the Act and the Rules. In this regard, the Commission has long held that a downward adjustment of an assessed forfeiture is not justified where violators claim their actions or omissions were due to inadvertent errors.²⁵ Moreover, the Commission has long held that "licensees are responsible for the acts and omission of their employees and independent contractors,"²⁶ and has consistently "refused to excuse licensees from forfeiture penalties where the actions of employees or independent contractors have resulted in violations."²⁷ Accordingly, we find that no reduction of the proposed forfeiture is warranted on this basis.

12. Finally, we note that Visiplex apparently continues to operate its wireless synchronized clock radio systems under call signs Stations WPJU326 and WQBF524 at variance from the terms of its licenses. Accordingly, pursuant to Section 308(b) of the Act,²⁸ we direct Visiplex to submit a report within 30 days of the date of this *Notice of Apparent Liability for Forfeiture and Order* verifying that it is no longer operating at variance from the terms of these licenses.

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to pursuant to Section 503(b) of the Act²⁹ and Sections 0.111, 0.311 and 1.80 of the Rules,³⁰ Visiplex, Inc. **IS** hereby **NOTIFIED** of its

²³ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17113.

²⁴ 47 C.F.R. § 1.80(b), Note to Paragraph (b)(4): *Section I. Base Amounts for Section 503 Forfeitures*.

²⁵ *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992); *Southern California*, 6 FCC Rcd at 4387 (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance").

²⁶ *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64 (2002) ("*Eure*"); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34, 35 (1991); *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972).

²⁷ See *Eure*, 17 FCC Rcd at 21863-64; *Triad Broadcasting Company, Inc.*, Memorandum Opinion and Order, 96 FCC 2d 1235, 1244 (1984).

²⁸ 47 U.S.C. § 308(b).

²⁹ 47 U.S.C. § 503(b).

³⁰ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

APPARENT LIABILITY FOR A FORFEITURE in the amount of twelve thousand dollars (\$12,000) for the willful and repeated violation of Section 301 of the Act and Section 1.903(a) of the Rules.

14. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,³¹ within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture and Order*, Visiplex **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

15. 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 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 with any questions regarding payment procedures. Visiplex will also send an electronic notification on the date said payment is made to Neal.McNeil@fcc.gov and Ricardo.Durham@fcc.gov.

16. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

17. 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; 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.

18. **IT IS FURTHER ORDERED** that, pursuant to Section 308(b) of the Act, Visiplex shall submit the report required in paragraph 12 within 30 days of the date of this *Notice of Apparent Liability for Forfeiture and Order*.

19. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture and Order* shall be sent by first class mail and certified mail return receipt requested to Sam Agam, President, Visiplex, Inc. 100 N. Fairway Drive, Vernon Hills, IL 60061.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

³¹ 47 C.F.R. § 1.80.