

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

In the Matter of)	
)	
All American Citywide Rainbow Transit, Inc.)	File No.: EB-02-NY-128
)	NAL/Acct. No. 200332380001
WNLH895)	FRN 0007-5630-75
Long Island City, New York)	

FORFEITURE ORDER

Adopted: January 20, 2004

Released: January 22, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of three thousand two hundred dollars (\$3,200) to All American Citywide Rainbow Transit, Inc. (“Citywide”), a school bus operator, for willful and repeated violation of Section 90.403(a)(2) of the Commission’s Rules (“Rules”).¹ Citywide is authorized under call sign WNLH895 to operate radio transmitting equipment on the frequency of 155.235 MHz, at 11-08 30th Avenue, Long Island City, New York. The noted violation involves Citywide’s failure to operate radio transmitting equipment in a permissible manner by operating on the unauthorized frequency of 155.265 MHz.

2. On October 8, 2002, the District Director of the Commission’s New York, New York, Field Office (“New York Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of \$4,000 to Citywide.² Citywide filed a response to the NAL dated October 23, 2002.

II. BACKGROUND

3. On June 28, 2002, the New York Office received a complaint about interference on frequency 155.265 MHz. On July 8, 2002, agents from the New York Office observed an interfering signal on 155.265 MHz. Using direction finding techniques, the agents traced the source of the interference on 155.265 MHz to transmitters located at 4-05 26th Avenue, Long Island City, New York, and 11-08 30th Avenue, Long Island City, New York. After returning to the office the agents determined from the FCC’s data base that there is no authorization to operate a station on 155.265 MHz in Long Island City, New York.

4. On July 16, 2002, the agents again observed a radio signal on 155.265 MHz and identified the source as 4-05 26th Avenue, Long Island City, New York. The agents then conducted an inspection of the station at that location and determined that Citywide operated that station and that it was licensed to operate radio station WNLH895 on 155.235 MHz.

5. On October 8, 2002, the New York Office issued an NAL in the amount of \$4,000 to Citywide. In its response, Citywide states that, when it moved its station to a new location, its transmitter

¹ 47 C.F.R. § 90.403(a)(2).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332380001 (Enf. Bur., New York Office, released October 8, 2002).

was incorrectly installed on the wrong frequency and that this problem has been corrected. Citywide seeks cancellation or reduction of the proposed monetary forfeiture and asserts that it has a history of compliance.

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“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*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Policy Statement*”). In examining Citywide’s 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.⁵

7. Section 90.403(a)(2) of the Rules requires licensees of radio stations in the private land mobile radio services to “exercise such direction and control as is necessary to assure that all authorized facilities are employed only in a permissible manner.” The FCC agent’s investigation establishes that Citywide operated transmitters located at 4-05 26th Avenue, Long Island City, New York, and 11-08 30th Avenue, Long Island City, New York, on an unauthorized frequency (155.265 MHz) and, therefore, failed to exercise the direction and control necessary to assure that its facilities were employed only in a permissible manner. Based on the facts before us, we find that Citywide willfully⁶ and repeatedly⁷ violated Section 90.403(a) (2) of the Rules.

8. No mitigation is warranted on the basis of Citywide’s correction of the violation. As the Commission stated in *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994), “corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations.”⁸

9. We do, however, find that Citywide has a history of overall compliance and, accordingly, reduce the forfeiture amount to \$3,200.

10. We have examined Citywide’s response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Citywide willfully and repeatedly violated Section 90.403(a)(2) of the Rules and we find that, although

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ 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,’ ... 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).

⁷ Citywide operated on an unauthorized frequency on June 28 and July 16, 2002. As provided by 47 U.S.C. § 312(f)(2), a violation which occurs more than once is “repeated.” The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁸ See also *Callais Cablevision, Inc.*, 17 FCC Rcd 22626, 22629 (2002); *Radio Station KGVL, Inc.*, 42 FCC 2d 258, 259 (1973); and *Executive Broadcasting Corp.*, 3 FCC 2d 699, 700 (1966).

cancellation of the proposed monetary forfeiture is not warranted, reduction of the forfeiture amount to \$3,200 is appropriate.

11. The agents' investigation and Citywide's response to the *NAL* indicate that WNLH895 has a control point and a fixed transmitter site at 4-05 26th Avenue, Long Island City, New York. However, the Commission's license records indicate that the authorized location of WNLH's control point and fixed transmitter site is 11-08 30th Avenue, Long Island City, New York. Operation of a radio station from a location not authorized by the station's license is prohibited by Section 301 of the Communications Act of 1934, as amended ("Act"),⁹ and Sections 1.903(a)¹⁰ and 90.432(a)(2) of the Rules. Accordingly, we will require, pursuant to Section 308(b) of the Act,¹¹ that Citywide report to the Enforcement Bureau within thirty (30) days of the release of this *Order* whether WNLH895's control point and fixed transmitter site are at their authorized location. Citywide's report must be submitted in the form of an affidavit signed by an officer or director of the licensee. If Citywide fails to submit such a report or we find that Citywide is still operating from an unauthorized location, we will consider further appropriate enforcement action.

IV. ORDERING CLAUSES

12. **ACCORDINGLY, IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act,¹² and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹³ All American Citywide Rainbow Transit, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$3,200 for willfully and repeatedly violating Section 90.403(a)(2) of the Rules.

13. **IT IS ALSO ORDERED** that, pursuant Section 308(b) of the Act, Citywide must submit the report described in Paragraph 11, above, within 30 days from the release of this *Order*, to Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Room 7-A 820, Washington, D.C. 20554

14. 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.¹⁴ Payment shall be made by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 200332380001, and FRN 0007-5630-75. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁵

⁹ 47 U.S.C. § 301

¹⁰ 47 C.F.R. § 1.903(a)

¹¹ 47 U.S.C. § 308(b)

¹² 47 U.S.C. § 503(b).

¹³ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁴ 47 U.S.C. § 504(a).

¹⁵ See 47 C.F.R. § 1.1914.

15. **IT IS FURTHER ORDERED THAT** a copy of this *Order* shall be sent by first class mail and certified mail, return receipt requested, to All American Citywide Rainbow Transit, Inc., 11-08 30th Avenue, Long Island City, New York 11102.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau