

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

In the matter of)	File No. EB-02-PA-275
)	
Horizon Communications)	NAL/Acct. No. 200332400002
WPMM811 and WPMT622)	
Cliffside Park, New Jersey)	FRN: 0003-4622-31

FORFEITURE ORDER

Adopted: November 9, 2004

Released: November 15, 2004

By the Assistant Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000) to Horizon Communications (“Horizon”) for willful and repeated violation of Sections 1.903(a) and 90.425(a) of the Commission’s Rules (“Rules”).¹ The noted violations involve Horizon’s operations at an unauthorized location and failure to transmit the call sign identification on its stations WPMM811 and WPMT622.

2. On December 5, 2002, the Commission’s Philadelphia, Pennsylvania District Office (“Philadelphia Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Horizon for a forfeiture in the amount of ten thousand dollars (\$10,000).² Horizon filed a response to the NAL on January 6, 2003.³

II. BACKGROUND

3. On July 17, 2002, the Philadelphia Office received a complaint of interference on 452.725 MHz from Westchester County (“Westchester”), licensee of station WQR630.⁴ On July 29, agents from the Philadelphia Office and the Commission’s New York, New York District Office (“New York Office”) determined that Horizon was operating on co-channel frequency 452.725 MHz by providing radio communication services to Eastland Car Service, a taxi company, on a transmitter located at the Cadman Towers, 101 Clark Street, Manhattan, New York. In connection with this investigation, the agents further discovered that Horizon was providing service to Lower Eastside Car Service on 462.200 MHz at the same location. At the time of the investigation, Horizon was authorized to operate station WPMM811 on the frequency 452.725 MHz at 195 First Street, Newark, New Jersey and station WPMT622 on the frequency 462.200 MHz at 1500 Palisade Avenue, Fort Lee, New Jersey.

¹ 47 C.F.R. §§ 1.903(a) and 90.425(a).

² *Notice of Apparent Liability for Forfeiture*, File No. EB-02-PA-275, NAL/Acct. No. 200332400002 (released December 5, 2002).

³ Horizon’s response was styled “Petition for Reconsideration.” We will consider Horizon’s petition as a response to the NAL pursuant to 47 C.F.R. § 1.80(f)(3) (hereinafter “Response”). An opportunity to file a petition for reconsideration after issuance of this *Order* is provided pursuant to 47 C.F.R. 1.80(i).

⁴ The NAL contained a typographical error, identifying Westchester’s station as “WQR620.” Commission records indicate that WQR630 is the correct call sign.

Horizon is licensed under Part 90 of the Rules and has a location-specific license, rather than a license for a service area.

4. Also on July 29, 2002, the Philadelphia Office and New York Office agents monitored Horizon's radio transmissions on 452.725 MHz and 462.200 MHz. During that period, the agents observed that no call signs were transmitted on the stations. Employees of both of the taxi companies using Horizon's frequencies, Eastland Car Service operating on 452.725 MHz (WPMM811), and Lower Eastside Car Service operating on 462.200 MHz (WPMT622), confirmed to the agents that neither station transmitted call sign identification.

5. On August 5, 2002, the Philadelphia Office issued a *Notice of Violation* ("NOV") to Horizon for operating stations WPMM811 and WPMT622 at an unauthorized location, in violation of Section 1.903(a) of the Rules, and for failure to transmit call sign identification for stations WPMM811 and WPMT622, in violation of Section 90.425(a) of the Rules. Horizon responded to the NOV on August 14, 2002, stating that it had contacted Westchester County to discuss reducing their co-channel interference and that Horizon would shift its antenna and lower output power. In its response, Horizon effectively conceded that it was not transmitting its call sign for either station, stating that it would program Lower Eastside's station once it received a temporary authorization, and that an external identifier would have to be put onto the Eastland Car Service transmitter.⁵ Horizon further stated that it had submitted an application for Eastland Car Service to operate on 452.725 MHz, and another application for Lower Eastside Car Service to operate on 462.200 MHz.

6. On December 5, 2002, the District Director of the Philadelphia Office issued the subject NAL to Horizon for its operations at an unauthorized location and its failure to transmit the call sign identification on its stations in willful and repeated violation of Sections 1.903(a) and 90.425(a) of the Rules. In its response, Horizon admits that it relocated the stations but avers that Westchester was not receiving "harmful" interference, and that the move was intended to test a new coverage area that was intended to reduce the possibility of co-channel interference. Therefore, Horizon argues, the move was not a "conscious and deliberate" attempt to violate the Communications Act.

III. DISCUSSION

7. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, ("Act"),⁶ Section 1.80 of the Rules,⁷ 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 Horizon'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 such other matters as justice may require.⁸

8. Section 1.903(a) of the Rules states that a station in the Wireless Radio Services may only be used and operated in accordance with the rules applicable to its particular service, and only with a valid authorization. Horizon admits that it moved its stations from its licensed locations in June 2002

⁵ In its reply to the *Notice of Violation*, Horizon stated that Eastland Car Service would have an external transmitter put on frequency "452.275 MHz." We conclude that this was a typographical error, and Horizon meant to state 452.725 MHz.

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ 47 U.S.C. § 503(b)(2)(D).

without authorization.⁹ Its stated reasons for moving the stations, that it wanted to test an alternate location to minimize interference to co-channel and adjacent channel licensees,¹⁰ is not an exception permitted in our rules. Moreover, Horizon does not provide proof of any efforts it made to coordinate with co-channel or adjacent channel licensees, or that it followed the Commission's frequency coordination requirements. Indeed it would have been impossible for any other licensee to contact Horizon to coordinate regarding increased interference, since Horizon was not broadcasting its call sign or any other contact information.¹¹

9. Horizon also argues that even if it was interfering with Westchester's operations, Westchester was not entitled to protection from interference because the frequencies are shared.¹² The question presented here, however, is not whether Westchester has grounds to complain of interference, but whether Horizon had authority to operate Stations WPMM811 and WPMT622 at Camden Towers rather than at their respective authorized locations. The complaint was simply the impetus for an investigation by the Philadelphia Office and New York Office agents.

10. Horizon argues that the new location was within the contours of the authorized locations for each station. We conclude that this argument is without merit. Horizon's relocation of its transmitters constitutes a major modification of its station license under the applicable rules.¹³ A major modification of a station license requires prior Commission authorization.¹⁴ Accordingly, Horizon had no color of authority to relocate Stations WPMM811 and WPMT622. Moreover, Horizon's license did not include a service area bound by contours delineated by a specific signal strength. Horizon is licensed for a specific transmitter location only, with no accompanying "service area."

11. Section 90.425(a) of the Rules requires stations licensed under Part 90 of the Rules to transmit the station's call sign during each transmission or once each 15 minutes during periods of continuous operation. Horizon acknowledges that it had not programmed Stations WPMM811 and WPMT622 to transmit their call signs.¹⁵ It states that it was planning to program the new call signs for the taxi companies when its tests were completed. Complete station relocation lasting more than a month and comprising full operational use by taxi companies is in our judgment not merely a "test" and in any event is not exempt from Section 90.425(a) of the Rules.

12. Horizon argues that its actions do not rise to the level of culpability of certain other forfeiture cases. Horizon states that "[i]n other forfeiture cases where the station was relocated, the licensee was fined an equal amount to Horizon. However, in each of those cases, the stations were relocated outside of the licensed interference contour, and the stations were not relocated with the

⁹ Response at 1.

¹⁰ Response at 3.

¹¹ The Commission has put in place a coordination procedure for stations in the Private Radio Services and requires applicants and licensees to make use of it. *See* 47 C.F.R. § 90.35(b)(2).

¹² Response at 3.

¹³ *See* 47 C.F.R. § 1.929(c)(4)(v). Horizon references 47 C.F.R. § 90.693(b), which states that for licensees in the 800 MHz band, moving a transmitter within the station's service area contours is a minor modification that does not require an application or Commission authorization in advance. Horizon is licensed in the 450 and 460 MHz bands.

¹⁴ *Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, 13 FCC Rcd. 21027, 21059 (1998) ("There are numerous instances in which an application could significantly affect other licensees on a shared frequency, and should therefore be considered major. We will therefore apply our major change rule to both exclusive and shared frequencies as proposed.")

¹⁵ Response at 6.

intention of resolving an interference concern.”¹⁶ We are not persuaded by this argument.¹⁷ We find that the cases Horizon cites do not provide support for a reduction in the forfeiture amount. We believe from a comparison standpoint the fact that Horizon is licensed for a specific transmitter location with no accompanying service area, its unauthorized relocation, at a minimum, is no less significant of a violation than that of a licensee who has relocated outside of its licensed interference contour. We therefore find the forfeiture amount proposed in the *NAL* to be appropriate.

13. In *Graytop Cab, Inc.*,¹⁸ which Horizon claims was a more serious violation than here, the former Field Operations Bureau assessed a forfeiture of \$4000 upon a finding that the licensee was operating a transmitter at an unauthorized location for the purpose of testing. Horizon also is claiming to have moved its transmitter for the purpose of testing, as in *Graytop Cab, Inc.* We find Horizon’s violation to be as serious as that in *Graytop Cab, Inc.*, however, because of the nature of Horizon’s license, coupled with the fact that it was not merely testing but had transferred all equipment and all full-time operations of two stations to the unauthorized location, and was not transmitting its call signs. Accordingly, *Graytop Cab, Inc.* is not analogous to the instant case.

14. In *Arvada Excavating Company*,¹⁹ which Horizon also claims was a more serious violation than here, the licensee had a geographic license rather than a site-based license, as does Horizon. Thus, the two situations are inapposite. Arvada, as a geographic licensee in the Trunked Business Service, has authority to place control transmitters at will within its geographic area, so long as it notifies the Commission.²⁰ Thus, Arvada was entitled to move a transmitter location within its service area but had failed to notify the Commission of the new location. In the instant case, as discussed above, Horizon requires prior Commission approval and prior coordination to relocate its transmitter. Moreover, as discussed above, Horizon’s license did not include a service area bound by contours delineated by a specific signal strength. Accordingly, we find that Horizon’s violation is worse than that in *Arvada*.

15. In *Colorado Small Business Development Association, Inc.*, the licensees to whom a forfeiture was issued were also geographic licensees. The licensees were assessed a forfeiture of \$10,000 and \$12,000 respectively, and did not contest the violation or the forfeiture amount.²¹ Once again, we find that this decision does not support Horizon’s arguments.

16. Finally, Horizon contends that it has acted in good faith because it was attempting to more effectively utilize crowded spectrum and because it has at all times cooperated with Commission employees in resolving problems. No reduction of the forfeiture for good faith is appropriate for these actions under Section 1.80 of the Rules. Horizon intentionally relocated two stations without authorization and without broadcasting the call signs so that affected parties could contact it. As noted above,²² Horizon has provided no persuasive evidence that its actions were taken in good faith to reduce spectrum congestion. Moreover, Horizon is obligated to respond to Commission communications

¹⁶ Horizon’s Response at 5.

¹⁷ As noted above, we are not persuaded that Horizon’s unauthorized relocation was in fact within its contour area. See ¶ 10, *supra*. Additionally, Horizon has provided no persuasive evidence that it was acting in good faith to reduce interference concerns. See ¶ 8, *supra*.

¹⁸ 1999 WL 528263; DA 99-1456, released July 26, 1999 (Dir., Legal Svcs Group CIB) (“*Graytop Cab.*”)

¹⁹ 15 FCC Rcd 13590 (Enf. Bureau 2000) (“*Arvada.*”)

²⁰ 47 C.F.R. § 90.135

²¹ 15 FCC Rcd. 5811 (Enf. Bureau 2000), *recon denied* 15 FCC Rcd. 24314 (2000) (“*Colorado Small Business Development.*”)

²² See ¶ 8, *supra*.

regarding rule violations.²³ The Commission does not award a downward reduction under these circumstances.²⁴ Horizon does not offer any support for its contention to the contrary.

17. We agree with Horizon that the Commission has recognized it should not merely multiply the number of repeaters for each violation in assessing a forfeiture amount.²⁵ We disagree, however, with Horizon's characterization of the transmitters for Stations WPMM811 and WPMT622 as "repeaters."²⁶ The Commission takes into account numerous factors in determining the appropriate forfeiture in any given situation. As we have discussed herein, we find no mitigating circumstances in determining the forfeiture amount we assess Horizon. Horizon relocated two licensed stations without Commission authority and without broadcasting their call sign so that other parties could identify the signal. Thus, the forfeiture amount reflects the amount for each of the two violations and not simply a multiple. Moreover, Horizon, unlike the licensee in *CIPS*, did not bring the violation to the Commission's attention.

18. We have examined Horizon's response pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Horizon's violation of Sections 1.903(a) and 90.425(a) of the Rules is willful²⁷ and repeated²⁸ and find that no reduction of the monetary forfeiture assessed in the *Forfeiture Order* is warranted.

IV. ORDERING CLAUSES

19. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,²⁹ Horizon Communications **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for its willful and repeated violation of Sections 1.903(a) and 90.425(a) of the Commission's Rules.

20. 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.³⁰ 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 Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

²³ See 47 C.F.R. § 1.951.

²⁴ *Policy Statement*; 47 C.F.R. § 1.80.

²⁵ See *Central Illinois Public Service Company*, 15 FCC Rcd 1750 (1999) ("*CIPS*").

²⁶ Horizon's Response at 5.

²⁷ 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" *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

²⁸ As provided by 47 U.S.C. § 312(f)(2), "[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." 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). *Southern California Broadcasting Co.*, *supra*.

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

³⁰ 47 U.S.C. § 504(a).

Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. 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. 20554.³¹

21. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Horizon Communications, P.O. Box 387, Cliffside Park, New Jersey 07010, and to its counsel Alan S. Tilles, Esq., Shulman, Rogers, Gandal, Pordy & Ecker, P.A., 11921 Rockville Pike, Third Floor, Rockville, Maryland 20852.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau

³¹ See 47 C.F.R. § 1.1914.