

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

In the Matter of
Portland Taxicab Company,
Licensee of Station WPRJ576
Portland, Oregon
File No. EB-03-PO-070
NAL/Acct. No. 200432920001
FRN 000-865-1051

FORFEITURE ORDER

Adopted: November 10, 2004

Released: November 18, 2004

By the Assistant Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of twelve thousand dollars (\$12,000), to Portland Taxicab Company ("Portland Taxicab"), licensee of Station WPRJ576, for its willful and repeated violation of Sections 1.903(a), 90.210, 90.403(e) and 90.425(a) of the Commission's Rules ("Rules").

2. On January 30, 2004, the Resident Agent of the Commission's Portland, Oregon Field Office ("Portland Office") issued a Notice of Apparent Liability for Forfeiture ("NAL") in the amount of twelve thousand dollars (\$12,000). Portland Taxi filed a response on February 27, 2004.

II. BACKGROUND

3. On March 13, 2003, the Portland Office received a complaint from amateur radio station AB7F that interference was being received in its frequency band of 440.700 MHz – 440.780 MHz. An agent monitored the frequency band and observed the interference. The agent located the interfering signal to a repeater station operating on the frequencies 452.250 MHz and 457.250 MHz on top of Mt. Scott in Clackamas County, Oregon. Using the geographical coordinates for the station, the agent searched the

1 47 C.F.R. §§ 1.903(a), 90.210, 90.403(e) and 90.425(a).

2 Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200432920001 (Enf. Bur., Portland Office, released January 30, 2004).

3 45° 27' 17" north latitude and 122° 33' 01" west longitude.

Commission records⁴ which did not reveal any licenses authorized to operate on the frequencies 452.250 MHz or 457.250 MHz within this location. The agent also observed and measured spurious emissions in the frequency band from 440.700 MHz to 440.780 MHz at approximately 55 dB below the fundamental frequency 452.250 MHz transmitted from this repeater. The agent located the repeater's control point station to Portland Taxicab's business at 12624 NE Halsey Street, Portland Oregon.

4. The agent inspected the control point station at this address which had Portland Taxicab's FCC call sign license for WPRJ576 displayed. The license authorized repeater and mobile station operation on frequencies 452.125 MHz and 457.125 MHz in Clackamas County, Oregon. The agent issued verbal warnings to Portland Taxicab's office manager regarding its unauthorized operation on frequencies 452.250 MHz and 457.250 MHz and the station's spurious emissions transmitted by the repeater station causing interference to amateur station AB7F. The agent also issued a warning regarding the station's failure to transmit the station identification. Portland Taxicab's station manager informed the agent that the station would change the frequencies and fix the transmitter.

5. On March 17, 2003, the Portland Office agent again monitored the frequencies 452.250 MHz and 457.250 MHz and found the system still to be in violation of each of the above cited rules, at the same location notwithstanding the March 13, 2003 warning.

6. On January 30, 2004, the Portland Office issued an *NAL* to Portland Taxicab for its unauthorized transmissions on 452.250 MHz and 457.250 MHz, its spurious emissions causing interference to amateur radio operation and its failure to identify the station during its operation. On February 27, 2004, the Bureau received a response to the *NAL*. In its response, Portland Taxicab does not dispute the violations. Rather, Portland Taxicab states that it has fired its former station manager for misleading the owners and failing to properly operate the company resulting in financial difficulties making it impossible to pay the forfeiture and avoid bankruptcy. Portland Taxicab states that it fixed the interference problem as quickly as it could to maintain communications with its taxi cabs. In support of its claim of an inability to pay the forfeiture, Portland Taxicab submitted its 2000 tax return and several unsigned "balance sheets" and a letter from its current manager regarding its current financial condition. Consequently, Portland Taxicab requests a cancellation or reduction of the proposed forfeiture.

III. DISCUSSION

7. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁵ Section 1.80 of the Rules,⁶ 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). In examining Portland Taxicab'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.⁷

8. Portland Taxicab acknowledged that the violations for which it was cited did, in fact, occur but claims that it did not intentionally violate any FCC order. Commission precedent holds that a violation

⁴ The Commission's Antenna Structure Registration Data Base contains the geographical coordinates for each registered antenna structure. The Commission's Licensing Data Bases contain the geographical coordinates for each license.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(D).

need not be intentional to be willful.⁸ Because there is no dispute as to whether the violations occurred, we affirm issuance of the forfeiture and conclude that Portland Taxicab Company willfully and repeatedly⁹ violated Sections 1.903(a), 90.210, 90.403(e) and 90.425(a) of the Rules.

9. In mitigation, Portland Taxicab attributes the violations to the incompetence of a general manager who has been fired. The improper actions by an employee cannot save Portland Taxicab from responsibility for its violations. The Commission has long held that the licensee is responsible for the acts and omissions of its employees.¹⁰ Thus, Portland Taxicab is responsible for the violations which occurred during the tenure of its previous general manager. Additionally, Portland Taxicab's remedial actions to correct the violations subsequent to notification of the violations do not mitigate the violations.¹¹ It is well established that "corrective action taken to come into compliance with Commission Rules or policy is expected,¹² and does not nullify or mitigate any prior forfeitures or violations."

10. Further, with respect to Portland Taxicab Company's request for a waiver or substantial reduction of the forfeiture claiming an inability to pay the \$12,000 dollar forfeiture assessed, as explicitly stated in the *NAL*, the Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits adequate documentation to support its claim.¹³ Portland Taxicab failed to submit acceptable documentation providing only its 2000 tax return and various other non verified documents. Because Portland Taxicab failed to present acceptable documentation regarding its claimed inability to pay the forfeiture, we have no basis on which to analyze its claim. Accordingly, no reduction is warranted. Finally, although there is precedent for reducing or rescinding a forfeiture based on bankruptcy in certain circumstances,¹⁴ Portland Taxicab Company has not filed for bankruptcy.

⁸ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeiture 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).

⁹ 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*.

¹⁰ See, *Eure Family Limited Partnership*, 17 FCC Rcd 21,861, 21863 ¶ 7 (2002).

¹¹ See *Radio Station KGVL, Inc.*, 42 FCC 2d 258, 259 (1973); *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002).

¹² *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 ¶ 7 (1994).

¹³ The *NAL* set forth the following factors: (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 financial status.

¹⁴ See, e.g., *Dennis Elam, Trustee for Bakcor Broadcasting, Inc., Debtor*, 11 FCC Rcd 1137 (1996) (forfeiture rescinded after bankruptcy trustee was appointed and the violator was no longer associated with the subject radio stations); *Interstate Savings, Inc. d/b/a ISI Communications*, 12 FCC Rcd 2934 (CCB 1997) (forfeiture rescinded where trustee was appointed in Chapter 7 liquidation, removing violator from operating as a common carrier and from involvement in dissolution or distribution of assets. Requiring trustee to pay the forfeiture would diminish estate assets available to innocent creditors and serve no public interest purpose.).

IV. ORDERING CLAUSES

11. 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,¹⁵ Portland Taxicab Company. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twelve thousand dollars (\$12,000) for willfully and repeatedly violating Sections 1.903(a), 90.210, 90.403(e) and 90.425(a) of the Rules.

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.¹⁶ Payment shall be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. 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, 525 West Monroe, 8th Floor Mailroom, Chicago, Illinois 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 Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁷

13. **IT IS FURTHER ORDERED** that, a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested and First Class Mail to Randell Owens, Portland Taxicab Company, 12624 NE Halsey, Portland, Oregon 97230 and its Counsel, Charles R. Williamson, Esq., Kell, Alterman & Runstein, LLP, 520 SW Yamhill St., Suite 600, Portland, Oregon 97204.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau

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

¹⁶ 47 U.S.C. § 504(a).

¹⁷ See 47 C.F.R. § 1.1914.