

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

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

MEMORANDUM OPINION AND ORDER

Adopted: January 25, 2007

Released: January 29, 2007

By the Assistant Chief, Enforcement Bureau:

I. INTRODUCTION

1. By this *Memorandum Opinion and Order ("Order")*, we deny the Petition for Reconsideration filed by Portland Taxicab Company ("Portland Taxicab") licensee of radio station WPRJ576, Portland, Oregon. Portland Taxicab seeks reconsideration of an Enforcement Bureau ("Bureau") *Forfeiture Order*¹ which found Portland Taxicab liable for a monetary forfeiture in the amount of twelve thousand dollars (\$12,000) for 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 The noted violations involve Portland Taxicab's operation on frequencies without a valid FCC authorization, transmission of spurious emissions resulting in harmful interference to an amateur radio station, and failure to transmit proper station identification. For the reasons discussed below, the forfeiture amount of \$12,000 will not be reduced.

II. BACKGROUND

2. On March 13, 2003, the Commission's Portland, Oregon Resident Agent Office ("Portland Office") received a complaint from an amateur radio operator regarding interference to the 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. Upon review of Commission records, the agent did not find a license authorizing operation on the frequencies 452.250 MHz or 457.250 MHz at 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.

3. 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

¹ *Portland Taxicab Company*, 19 FCC Rcd 22511 (Enf. Bur. 2004).

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

issued oral 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.

4. 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.

5. On January 30, 2004, the Portland Office issued a *Notice of Apparent Liability for Forfeiture* ("NAL")³ in the amount of twelve thousand dollars (\$12,000) for apparent willful and repeated violation of Sections 1.903(a), 90.210, 90.403(e) and 90.425(a) of the Rules. Portland Taxicab, in its February 27, 2004, response did not dispute the violations, rather, it sought reduction or cancellation of the proposed forfeiture due to an inability to pay. On November 18, 2004, the Bureau, finding insufficient documentation to consider the inability to pay claim, issued a *Forfeiture Order* which imposed a forfeiture in the amount of \$12,000 against Portland Taxicab for the noted violations. In its Petition for Reconsideration of the *Forfeiture Order*, Portland Taxicab does not dispute the violations but again seeks a reduction or cancellation of the forfeiture based on its inability to pay the \$12,000 forfeiture.

III DISCUSSION

6. In assessing forfeiture amounts, Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), and Section 1.80(b)(4) of the Rules⁴ require that the Commission take into account, among other things, the party's ability to pay a forfeiture. A successful claim to reduce a forfeiture for inability to pay requires specific supporting financial documentation.⁵ In analyzing economic-hardship claims, the Commission generally looks to a company's gross revenues from the three most recent tax years as a reasonable and appropriate yardstick to determine its ability to pay an assessed forfeiture.⁶ Indeed, the Commission has stated that if a company's gross revenues are sufficiently large, the fact that net losses are reported, alone, does not necessarily signify an inability to pay.⁷ Thus, 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 ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status.

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200432920001 (Enf. Bur., Portland Office, released January 30, 2004).

⁴ 47 C.F.R. § 1.80 (b)(4).

⁵ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992); see also *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17106-07 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

⁶ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd at 2089; see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17106-07, ¶ 43.

⁷ See, e.g., *Local Long Distance, Inc.*, 15 FCC Rcd 24385 (2000), *recon. denied*, 16 FCC Rcd 10023, 10025 (2001); *Independent Communications, Inc.*, 14 FCC Rcd 9605 (1999), *recon. denied*, 15 FCC Rcd 16060, 16060 (2000); *Hoosier Broadcasting Corp.*, 14 FCC Rcd 3356 (CIB 1999), *recon. denied*, 15 FCC Rcd 8640, 8641 (Enf. Bur. 2000).

7. In its Petition for Reconsideration of the *Forfeiture Order*, Portland Taxicab supplies tax returns for a two year period, several financial documents regarding its financial condition for the third year, and an affidavit of its owner general manager attesting to the accuracy of the financial documentation.

8. We have reviewed the documentation presented and find that Portland Taxicab's gross revenues for the relevant years are sufficient to pay the forfeiture as the percentage of gross revenues/income represented by the forfeiture amount is within the range generally considered payable.⁸

9. We have examined Portland Taxicab's Petition for Reconsideration pursuant to the statutory factors prescribed by Section 503(b) of the Act,⁹ and in conjunction with the *Policy Statement*. As a result of our review, we conclude that no reduction is warranted and affirm \$12,000 as the appropriate amount for the forfeiture.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to pursuant to Section 405 of the Act,¹⁰ and Section 1.106 of the Rules,¹¹ Portland Taxicab Company's Petition for Reconsideration of the *Forfeiture Order* **IS DENIED** and the *Forfeiture Order* finding Portland Taxicab Company liable for a \$12,000 forfeiture for willful and repeated violations of Sections 1.903(a), 90.210, 90.403(e) and 90.425(a) of the Rules **IS AFFIRMED**.

11. 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.¹² 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 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, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.¹³

⁸ See *PJB*, 7 FCC Rcd at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Hoosier Broadcasting*, 15 FCC Rcd at 8641; (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Afton Communications Corp.*, 7 FCC Rcd 6741 (forfeiture not deemed excessive where it represented approximately 3.9 percent of the violator's gross revenues).

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 U.S.C. § 405.

¹¹ 47 C.F.R. § 1.106.

¹² 47 U.S.C. § 504(a).

¹³ See 47 C.F.R. § 1.1914.

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Portland Taxicab Company, 12624 NE Halsey Street, Portland, Oregon 97230 and to 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