

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

In the Matter of)	File No. EB-06-SE-370
Yellow Cab Leasing, Inc.)	NAL/Acct. No. 200732100039
Canton, Ohio)	FRN # 0002937126

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 5, 2007

Released: July 10, 2007

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture*, we find Yellow Cab Leasing, Inc. (“Yellow Cab”), former licensee of Private Land Mobile Radio Service (“PLMRS”) station KNHW827, in Canton, Ohio, apparently liable for a forfeiture in the amount of ten thousand, five hundred dollars (\$10,500) for operating a PLMRS station without Commission authority, failing to file a timely renewal application for the station and failing to respond to directives of the Enforcement Bureau (“Bureau”) to provide certain information. Yellow Cab acted in apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”),¹ and Sections 1.903 and 1.949(a) of the Commission’s Rules (“Rules”).²

II. BACKGROUND

2. Yellow Cab was granted a PLMRS station license under call sign KNHW827 on August 27, 1998, with an expiration date of November 16, 2003. Yellow Cab did not file a renewal application and thus its license to operate station KNHW827 expired on November 16, 2003.

3. In October 2006, the Enforcement Bureau received a complaint from the City of Canton, Ohio alleging that Yellow Cab was continuing to operate Station KNHW827 without authorization. The City of Canton indicated that it requires cab companies to be equipped with two-way radios and that it had confirmed the operation of Station KNHW827 through conversations with at least 16 cab drivers the previous week. On November 9, 2006, the Bureau’s Spectrum Enforcement Division (“Division”) issued a letter of inquiry to Yellow Cab.³ The letter of inquiry directed Yellow Cab to submit a response within 30 business days and explained that failure to appropriately respond may constitute a violation of the Communications Act and Rules. Yellow Cab did not respond to the Division’s inquiry. On January 17, 2007, the Division issued a second letter of inquiry to Yellow Cab,⁴ but received neither a return receipt nor a response. Subsequently, on March 27, 2007, the Division issued another letter of inquiry to Yellow

¹ 47 U.S.C. § 301.

² 47 C.F.R. §§ 1.903 and 1.949(a).

³ Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Yellow Cab Leasing, Inc. (November 9, 2006). The Division received a certified mail return receipt showing that Yellow Cab had received the letter on November 21, 2006.

⁴ Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Yellow Cab Leasing, Inc. (January 17, 2007).

Cab.⁵ Again, Yellow Cab failed to respond to the Division's inquiry. On April 12, 2007, Yellow Cab filed an application for a new PLMRS station which the Wireless Telecommunications Bureau granted under call sign WQGX626 on May 16, 2007.⁶

III. DISCUSSION

4. Section 301 of the Act and Section 1.903 of the Rules prohibit the use or operation of any apparatus for the transmission of energy, communications or signals by a wireless radio station except under, and in accordance with, a Commission granted authorization. Additionally, Section 1.949(a) of the Rules requires licensees to file renewal applications for wireless radio stations, "no later than the expiration date of the authorization for which renewal is sought, and no sooner than 90 days prior to expiration." Absent a timely filed renewal application, a wireless radio station license automatically terminates on the date of expiration.⁷

5. As a Commission licensee, Yellow Cab is required to maintain a current authorization to operate its station.⁸ Yellow Cab apparently operated its PLMRS station without authorization for over three years, from November 16, 2003 to April 12, 2007 (the date that the Wireless Telecommunications Bureau received the subject license application).⁹ By operating its station without authorization, Yellow Cab apparently willfully and repeatedly violated Section 301 of the Act and Section 1.903 of the Rules. Yellow Cab also acted in apparent violation of Section 1.949(a) of the Rules by failing to file a timely renewal application for the station.

6. Sections 4(i), 4(j), and 403 of the Act afford the Commission broad authority to investigate the entities it regulates.¹⁰ Section 4(i) authorizes the Commission to "issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions," and Section 4(j) states that "the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice." Section 403 likewise grants the Commission "full authority and power . . . to institute an inquiry, on its own motion . . . relating to the enforcement of any of the provisions of this Act." Pursuant to that authority, the Bureau three times ordered Yellow Cab to submit a timely written response to its letters of inquiry and to provide the information requested. Three times Yellow Cab failed to respond as directed. It is well settled that a party cannot ignore the directives

⁵ Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Yellow Cab Leasing, Inc. (March 27, 2007). The Division received a certified mail return receipt showing that Yellow Cab had received the letter on March 31, 2007.

⁶ File No. 0002991326. The grant is "without prejudice to possible enforcement action for any prior unauthorized operation."

⁷ 47 C.F.R. § 1.955(a)(1).

⁸ See, e.g., *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64 (2002) (licensee is responsible for compliance with all Commission rules).

⁹ Section 90.159(b) of the Rules, 47 C.F.R. § 90.159(b), states that under certain circumstances (as here):

[a]n applicant proposing to operate a new land mobile radio station . . . below 470 MHz . . . that is required to submit a frequency recommendation . . . may operate the proposed station during the pendency of its application for a period of up to . . . 180 days upon the filing of a properly completed formal Form 601 application that complies with [the rules] if the application is accompanied by evidence of frequency coordination.

¹⁰ 47 U.S.C. §§ 4(i), 4(j) and 403.

in a Bureau letter of inquiry.¹¹

7. Section 503(b) of the Act,¹² and Section 1.80(a) of the Rules,¹³ provide that any person who willfully or repeatedly fails to comply with the provisions of the Act or the Rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Act, the term “willful” means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Commission's rules, and “repeatedly” means more than once.¹⁴ Based upon the record before us, it appears that Yellow Cab’s violations of Section 301 of the Act and Sections 1.903 and 1.949(a) were willful and repeated. It also appears that Yellow Cab willfully and repeatedly failed to respond to Bureau inquiries concerning its PLMRS license.

8. In determining the appropriate forfeiture amount, Section 503(b)(2)(E) of the Act directs us to consider factors, such as “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.”¹⁵ Having considered the statutory factors, as explained below, we propose an aggregate forfeiture in the amount of \$10,500.

9. Section 1.80(b) of the Rules¹⁶ sets a base forfeiture amount of three thousand dollars (\$3,000) for failure to file required forms or information, and ten thousand dollars (\$10,000) for operation of a station without Commission authority. As the Commission recently held, a licensee’s failure to timely file a renewal application and its continued operation without authorization constitute separate violations of the Act and the rules and warrant the assessment of separate forfeitures.¹⁷ Accordingly, we propose separate forfeiture amounts for Yellow Cab’s separate violations.

10. Consistent with precedent, we propose a \$1,500 forfeiture for Yellow Cab’s failure to file the renewal application for its PLMRS station within the time period specified in Section 1.949(a) of the

¹¹ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002) (Commission assessed a \$100,000 forfeiture against a carrier for its willful refusal to supply a sworn declaration in response to a Bureau letter of inquiry, stating: “[T]he order at issue here was squarely within the Commission’s authority and, in any event, parties are required to comply with Commission orders even if they believe them to be outside the Commission’s authority.”); see *General Growth Properties*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 6562 (Enf. Bur., Spectrum Enf. Div. 2007) (“*General Growth Properties*”) (proposing a \$4,000 forfeiture for repeated failure to respond to written Bureau inquiries concerning its PLMRS station); *Shenzhen Ruidian Communication Co. Ltd.*, Forfeiture Order, 21 FCC Rcd 2177 (Enf. Bur., Spectrum Enf. Div. 2006) (“*Shenzhen Ruidian*”) (assessing a \$4,000 forfeiture for willfully and repeatedly failing to respond to a directive of the Bureau to provide certain information and documents).

¹² 47 U.S.C. § 503(b).

¹³ 47 C.F.R. § 1.80(a).

¹⁴ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387–88 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

¹⁵ 47 U.S.C. § 503(b)(2)(E); see also *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* (“*Forfeiture Policy Statement*”), Report and Order, 12 FCC Rcd 17087, 17110 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

¹⁶ 47 C.F.R. § 1.80(b).

¹⁷ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7438 (2004) (“*Discussion Radio*”) (proposing forfeitures of \$5,000 and \$1,500, respectively, against a broadcaster who both operated its station for 14 months without Commission authority and failed to timely file its renewal application).

Rules.¹⁸ Additionally, we propose a five thousand dollar (\$5,000) forfeiture for Yellow Cab's continued operation of its PLMRS station after the expiration of its license on November 16, 2003.¹⁹ In proposing a \$5,000 forfeiture for Yellow Cab's unauthorized operations, we recognize that the Commission considers a licensee who operates a station with an expired license in better stead than a pirate broadcaster who lacks prior authority, and thus downwardly adjust the \$10,000 base forfeiture amount accordingly.²⁰ Thus, we propose an aggregate forfeiture of six thousand five hundred dollars (\$6,500) (\$1,500 for failure to timely file a renewal application and \$5,000 for unauthorized operations).

11. Pursuant to the *Forfeiture Policy Statement*²¹ and Section 1.80 of the Rules,²² the base forfeiture amount for failure to respond to a Commission communication is four thousand dollars (\$4,000). We find that Yellow Cab's willful and repeated failure to respond to the Bureau's inquiries warrants a proposed forfeiture. Misconduct of this type exhibits a disregard for the Commission's authority that cannot be tolerated, and, more importantly, threatens to compromise the Commission's ability to adequately investigate violations of its rules. Accordingly, applying the *Forfeiture Policy Statement* and statutory factors to the instant case, we conclude that Yellow Cab is apparently liable for a forfeiture in the amount of \$4,000 for failing to respond to the Bureau's letters of inquiry.²³ Thus, we propose an aggregate forfeiture of \$10,500 for Yellow Cab's apparent willful and repeated violations of Section 301 of the Act and Sections 1.903 and 1.949(a) of the Rules and Yellow Cab's apparent willful and repeated failure to respond to Bureau inquiries concerning its PLMRS license.

¹⁸ See *Discussion Radio*, 19 FCC Rcd at 7438 (proposing a \$1,500 forfeiture for failure to file a timely renewal application for a broadcast station); *Hare Planting Co.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13517 (Enf. Bur., Spectrum Enf. Div. 2006), *forfeiture ordered*, Forfeiture Order, 21 FCC Rcd 7530 (Enf. Bur., Spectrum Enf. Div. 2007) ("*Hare Planting*") (assessing a forfeiture in the amount of \$1,500 for failure to file a timely renewal application for a PLMRS station); *Imperial Sugar Company*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 4987 (Enf. Bur., Spectrum Enf. Div. 2007) ("*Imperial Sugar*") (proposing a \$1,500 forfeiture for failure to file a timely renewal application for a PLMRS station).

¹⁹ Under Section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6), we are prohibited from assessing a forfeiture for a violation that occurred more than a year before the issuance of a NAL. Section 503(b)(6), however, does not bar us from considering Yellow Cab's prior conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period. See *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Liability for Forfeiture, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, Forfeiture Order, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671 (2000) (although the Commission may not find an entity liable for violations committed more than one year before the issuance of an NAL, "it may lawfully look at facts arising before that date in determining an appropriate forfeiture amount"). Accordingly, while we take into account the continuous nature of the violations in determining the appropriate forfeiture amount, our proposed forfeiture relates only to Yellow Cab's apparent violations that have occurred within the past year.

²⁰ See *Discussion Radio*, 19 FCC Rcd at 7438 (proposing a \$5,000 forfeiture for operating a station for 14 months beyond the expiration of its license); *Hare Planting*, 21 FCC Rcd 7530 (assessing a forfeiture in the amount of \$5,000 for continued operation of its PLMRS station for approximately 15 months after the expiration of its license); *Imperial Sugar*, 22 FCC Rcd 4987 (proposing a \$5,000 forfeiture for continued operation of its PLMRS station for approximately 20 months after the expiration of its license).

²¹ *Forfeiture Policy Statement*, 12 FCC Rcd 17087.

²² 47 C.F.R. § 1.80.

²³ See, e.g., *General Growth Properties*, 22 FCC Rcd at 6565, *Shenzhen Ruidian*, 21 FCC Rcd. at 2177.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act²⁴ and Sections 0.111, 0.311 and 1.80 of the Rules,²⁵ Yellow Cab Leasing, Inc. **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of \$10,500 for willful and repeated violation of Section 301 of the Act and Sections 1.903 and 1.949(a) of the Rules and for willful and repeated failure to respond to a Bureau order.

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

14. 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. A request for full payment under an installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁶

15. 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.

16. 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.

17. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by Certified Mail Return Receipt Requested to Mr. Fred C. Nero, Yellow Cab Leasing, Inc., 4137 Martindale Road, N.E., Canton, Ohio 44705.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

²⁴ 47 U.S.C. § 503(b).

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

²⁶ See 47 C.F.R. § 1.1914.