

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

In the Matter of)	
)	File No. EB-07-SE-136
Five Star Parking)	NAL/Acct. No. 200832100002
d/b/a Five Star Taxi Dispatch)	FRN # 0005954508
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 23, 2007**Released: October 25, 2007**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture*, we find Five Star Parking, d/b/a Five Star Taxi Dispatch ("Five Star"), former licensee of Private Land Mobile Radio Service ("PLMRS") station WPNS752, apparently liable for a forfeiture in the amount of six thousand, five hundred dollars (\$6,500) for operating its PLMRS station without Commission authority and for failing to file a timely renewal application for the station. Five Star acted in apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended, ("Act")¹ and Sections 1.903(a) and 1.949(a) of the Commission's Rules ("Rules").²

II. BACKGROUND

2. On February 16, 2002, Five Star was granted a PLMRS station license under call sign WPNS752 with an expiration date of May 28, 2004.³ Five Star did not file a renewal application, and consequently its license to operate station WPNS752 expired on May 28, 2004. On April 3, 2007, Five Star filed with the Wireless Telecommunications Bureau ("WTB") a request for Special Temporary Authority ("STA") to operate WPNS752. On April 16, 2007, WTB granted Five Star's STA request under call sign WQGT889.⁴ On May 10, 2007, WTB approved an administrative update to the STA to change the name of the licensee to Gateway Security Taxi Dispatch ("Gateway").⁵

3. Because it appeared that Five Star may have operated WPNS752 after the expiration of its license, WTB referred this case to the Enforcement Bureau for investigation and possible enforcement action. On July 3, 2007, the Enforcement Bureau's Spectrum Enforcement Division issued a letter of inquiry ("LOI")⁶ to Five Star.

¹ 47 U.S.C. § 301.

² 47 C.F.R. §§ 1.903(a) and 1.949(a).

³ See File No. 0000735844.

⁴ See File No. 0002978776. The STA was granted without prejudice to possible enforcement action for any prior unauthorized operation.

⁵ See File No. 0003024421.

⁶ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to George Vizzachero, Five Star Taxi Dispatch (July 3, 2007).

4. On August 14, 2007, the Enforcement Bureau received Five Star's LOI Response ("Response").⁷ In its Response, Five Star stated that in October 2006 it became aware that its license to operate station WPNS752 had expired.⁸ Five Star explained that it ceased operation on October 31, 2006, when Gateway became the taxi dispatcher for John F. Kennedy International Airport ("JFK Airport") and was contractually obligated to turn the license under call sign WPNS752 over to Gateway.⁹ It was then, according to Five Star, that Five Star learned that its license had expired without renewal.¹⁰

5. Five Star submits that its failure to understand the renewal process led to the renewal of another PLMRS station held by Five Star, station WPRK427, rather than station WPNS752, which was held by Five Star for its taxi dispatch service.¹¹ Five Star stated that the vendor who was responsible for the renewal of its taxi dispatch license filed a renewal application for the wrong license, station WPRK427.¹² Five Star mistakenly believed the renewal application submitted by the vendor was for its taxi dispatch service license, station WPNS752.¹³ Five Star admitted operating station WPNS752 without Commission authorization from the date the license expired, May 28, 2004, through the date its taxi dispatch service contract expired with JFK Airport on October 31, 2006.¹⁴

III. DISCUSSION

6. Section 301 of the Act and Section 1.903(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by a wireless radio station except under, and in accordance with, a Commission granted authorization.¹⁵ Additionally, Section 1.949(a) of the Rules requires that licensees 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."¹⁶ Absent a timely filed renewal application, a wireless radio station license automatically terminates.¹⁷

⁷ See Letter from Haroon Akhtar, Operational Manager, Five Star Parking to Natasha O'Dell, Spectrum Enforcement Division, Enforcement Bureau, FCC (received August 14, 2007) ("Response"). Mr. Akhtar was the project manager for Five Star Taxi Dispatch from September 2003 through October 2006. Mr. Akhtar had previously requested an extension of time to respond to the LOI. See Letter from Haroon Akhtar to Ms. O'Dell (July 19, 2007).

⁸ Response at 1.

⁹ *Id.*

¹⁰ *Id.* However, Commission records indicate that Five Star had been sent a renewal notice on March 3, 2004.

¹¹ See Response at 1. Five Star Parking operated PLMRS station WPRK427 for its parking garage facility at JFK Airport. Five Star Parking was awarded a contract for taxi dispatch service at JFK Airport in September 2001 and operated PLMRS station WPNS752 for this service under the name Five Star Taxi Dispatch. *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ 47 U.S.C. § 301; 47 C.F.R. § 1.903(a).

¹⁶ 47 C.F.R. § 1.949(a).

¹⁷ 47 C.F.R. § 1.955(a)(1).

7. As a Commission licensee, Five Star was required to maintain its authorization in order to operate its PLMRS station.¹⁸ Five Star failed to properly review its renewal application for its taxi dispatching service prior to its submission, resulting in the renewal of WPRK427 instead of WPNS752.¹⁹ Five Star also conceded that it operated station WPNS752 without Commission authority from the station's license expiration date of May 28, 2004, until it ceased operation on October 31, 2006. By operating its PLMRS station for almost two and one-half years without authorization, Five Star apparently violated Section 301 of the Act and Section 1.903(a) of the Rules. Five Star also acted in apparent violation of Section 1.949(a) of the Rules by failing to file a timely renewal application for the station.

8. Section 503(b) of the Act,²⁰ and Section 1.80(a) of the Rules,²¹ 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.²² Based upon the record before us, it appears that Five Star's violations of Section 301 of the Act and Sections 1.903(a) and 1.949(a) of the Rules were willful and repeated.

9. 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."²³ Having considered the statutory factors, as explained below, we propose a total forfeiture of \$6,500.

10. Section 1.80(b) of the Rules sets a base forfeiture amount of ten thousand dollars (\$10,000) for operation of a station without Commission authority and three thousand dollars (\$3,000) for failure to file required forms or information.²⁴ As the Commission recently held, a licensee's continued operations without authorization and its failure to timely file a renewal application constitute separate violations of the Act and the Rules and warrant the assessment of separate forfeitures.²⁵ Accordingly, we

¹⁸ 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).

¹⁹ Response at 1. Attached to Five Star's Response is a cover letter and application from its vendor asking Five Star to review the application for accuracy.

²⁰ 47 U.S.C. § 503(b).

²¹ 47 C.F.R. § 1.80(a).

²² See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992); see also *Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13815 (Enf. Bur., Spectrum Enf. Div., 2006); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (Enf. Bur., Spectrum Enf. Div., 2006).

²³ 47 U.S.C. § 503(b)(2)(E). See also 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures; *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17110 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

²⁴ 47 C.F.R. § 1.80(b).

²⁵ 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 against a broadcaster who operated its station for 14 months without Commission authority and failed to timely file its renewal application).

herein propose separate forfeiture amounts for Five Star's separate violations.

11. We propose a \$5,000 forfeiture for Five Star's continued operation of station WPNS752 after the expiration of its license on May 28, 2004.²⁶ In proposing a \$5,000 forfeiture for the station'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.²⁷ Consistent with recent precedent, the proposed \$5,000 forfeiture takes into account that Five Star's unauthorized operations spanned almost two and one-half years from the license's expiration date.²⁸ In addition, we propose a \$1,500 forfeiture for Five Star's failure to file the renewal application for station WPNS752 within the time period specified in Section 1.949(a) of the Rules.²⁹ Thus, we propose an aggregate forfeiture of \$6,500.

12. The \$6,500 base forfeiture amount is not subject to further adjustment. We find that Five Star's efforts to come into compliance with Commission requirements do not entitle the company to any downward adjustment of the proposed \$6,500 forfeiture. Although Five Star's compliance efforts preceded any Commission investigation or initiation of enforcement action, the company failed to take immediate action to notify Commission staff after learning of the unauthorized operation. Under the circumstances, and consistent with precedent,³⁰ we find that no reduction of the proposed forfeiture for

²⁶ Section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6), prohibits the assessment of a forfeiture for violations that occurred more than a year prior to the NAL, but does not bar us from taking into account the continuous nature of violations in determining the appropriate enforcement action and/or forfeiture amount. See, e.g., *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-72 (2000); *Cate Communications Corp.*, Memorandum Opinion and Order, 60 RR 2d 1386, 1388 (1986); *Eastern Broadcasting Corp.*, Memorandum Opinion and Order, 10 FCC 2d 37, 37-38 (1967), *recon. denied*, 11 FCC 2d 193, 195 (1967); *Yellow Cab Leasing, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 12719, 12722 (Enf. Bur., Spectrum Enf. Div., 2007); *Ted Sakaida & Sons, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 9962, 9965 (Enf. Bur., Spectrum Enf. Div., 2007) ("*Sakaida*"), *response pending*.

²⁷ See *Discussion Radio*, 19 FCC Rcd at 7438; see also *Yellow Cab*, 22 FCC Rcd at 12722; *Sakaida*, 22 FCC Rcd at 9965; *Doss Aviation, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 9039, 9042 (Enf. Bur., Spectrum Enf. Div., 2007); *Imperial Sugar Company*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 4987 (Enf. Bur., Spectrum Enf. Div., 2007), *forfeiture ordered*, 22 FCC Rcd 17346 (Enf. Bur., Spectrum Enf. Div., 2007) ("*Imperial Sugar*").

²⁸ 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); see also *Yellow Cab*, 22 FCC Rcd at 12722 (proposing a \$5,000 forfeiture for operating a station 3½ years beyond the expiration of its license); *Imperial Sugar*, 22 FCC Rcd at 4990 (proposing a \$5,000 forfeiture for operating a station 1½ years beyond the expiration of its license).

²⁹ See *Discussion Radio*, 19 FCC Rcd at 7437-38 (proposing a \$1,500 forfeiture for failure to file a timely renewal); see also *Hare Planting Co., Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13517, 13519 (Enf. Bur., Spectrum Enf. Div., 2006) (proposing a \$1,500 forfeiture for failure to file a timely renewal), *forfeiture ordered*, 22 FCC Rcd 7530 (Enf. Bur., Spectrum Enf. Div., 2007); *Imperial Sugar*, 22 FCC Rcd at 4988 (proposing a \$1,500 forfeiture for failure to file timely renewal application for PLMRS station).

³⁰ See *Mitchell Electric Membership Cooperative, Camilla, Georgia*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 5538, 5541 (Enf. Bur., Spectrum Enf. Div., 2007) (finding that a downward adjustment was unwarranted where the violator waited six months after becoming aware of the violation to notify Commission staff and seek authority to operate the station); *American Paging, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 10417, 10420 (Wireless Telecommunications Bureau, Enf. and Consumer Info. Div., 1997) (finding that a downward adjustment for voluntary disclosure was unwarranted where the violator did not reveal its violation until approximately a month after having various conversations with Commission staff regarding an STA and that a (continued...))

good faith efforts to comply is warranted.

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act³¹ and Sections 0.111, 0.311 and 1.80 of the Rules,³² Five Star IS hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of six thousand, five hundred dollars (\$6,500) for the willful and repeated violation of Section 301 of the Act and Sections 1.903(a) and 1.949(a) of the Rules.

14. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,³³ within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Five Star **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

15. 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. 20554.³⁴

16. 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.

17. 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.

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downward adjustment for good faith attempts to comply was unwarranted where the violator continued to operate the station without authorization after its STA request was denied).

³¹ 47 U.S.C. § 503(b).

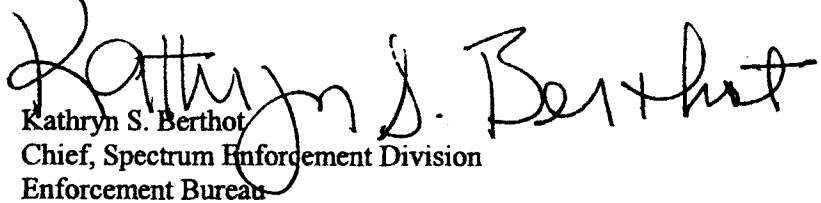
³² 47 C.F.R. §§ 0.111, 0.311 and 1.80.

³³ 47 C.F.R. § 1.80.

³⁴ 47 C.F.R. § 1.1914.

18. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail return receipt requested to Five Star Parking, d/b/a Five Star Taxi Dispatch, JFK International Airport, Bldg. 14, East Wing, 1st Floor, Jamaica, NY 11430-1206, Attention: George Vizzacchero, and to Haroon Akhtar, Operational Manager, Five Star Parking, P.O. Box 432, LaGuardia Airport, Flushing, NY 11371.

FEDERAL COMMUNICATIONS COMMISSION


Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau