

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

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

FORFEITURE ORDER

Adopted: February 19, 2008

Released: February 21, 2008

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of six thousand five hundred dollars (\$6,500) against Five Star Parking d/b/a Five Star Taxi Dispatch (“Five Star”) for willful and repeated violations 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 The noted violations involve Five Star’s operation of Private Land Mobile Radio Service (“*PLMRS*”) station WPNS752 without Commission authority and failure to file a timely renewal application for the station.

II. BACKGROUND

2. 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.³ 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.”⁴ Absent a timely filed renewal application, a wireless radio station license automatically terminates on the specified expiration date.⁵

3. On October 25, 2007, the Enforcement Bureau’s Spectrum Enforcement Division (“*Division*”) released a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) ⁶ finding that Five Star operated station WPNS752 without Commission authority after the expiration of its license and failed to timely file a renewal application for the station by the date of expiration. Specifically, the *NAL* found that Five Star operated station WPNS752 without Commission authority after its authorization expired on

¹ 47 U.S.C. § 301.

² 47 C.F.R. § 1.903(a) and 1.949(a).

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

⁴ 47 C.F.R. § 1.949(a).

⁵ 47 C.F.R. § 1.955(a)(1).

⁶ *Five Star Parking d/b/a Five Star Taxi Dispatch*, 22 FCC Rcd 18857 (Enf. Bur., Spectrum Enf. Div., 2007) (“*NAL*”).

May 28, 2004 until it ceased operation on October 31, 2006. The *NAL* also found that Five Star failed to file a timely renewal application for station WPNS752.⁷ These findings were based on Five Star's response⁸ to the Division's Letter of Inquiry⁹ wherein Five Star admitted to operating station WPNS752 after the expiration of its license and acknowledged that its failure to understand the renewal process led to the renewal of another PLRMS station license held by Five Star instead of station WPNS752.¹⁰ Thus, the Division proposed a forfeiture in the amount of \$6,500 for the apparent willful and repeated violations of Section 301 of the Act and Sections 1.903(a) and 1.949(a) of the Rules.¹¹

4. In its November 7, 2007 response to the *NAL*, Five Star seeks cancellation of the forfeiture, claiming that its operation of station WPNS752 without obtaining or renewing the license was unintentional as it mistakenly believed that its vendor had submitted a renewal application for this station.¹² Five Star explains that its vendor had mixed up Five Star's renewal application for its taxi dispatch service license (WPNS752) with the renewal application for another license held by Five Star.¹³ Due to its lack of knowledge about the renewal process, Five Star states that it was under the impression that the renewal application submitted by the vendor was for its taxi dispatch service license.¹⁴ Five Star further asserts that it has fully cooperated in the Commission's investigation. Based on these facts, Five Star requests cancellation of the proposed forfeiture.¹⁵

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,¹⁶ Section 1.80 of the Rules,¹⁷ and the Commission's *Forfeiture Policy Statement*.¹⁸ In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we 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.¹⁹ We have considered Five Star's response to the *NAL* in light of the above statutory factors, our Rules,

⁷ *Id.* at 18859.

⁸ See Letter from Haroon Akhtar, Operational Manager, Five Star Parking to Natasha O'Dell, Spectrum Enf. Div., Enf. Bur., FCC (rec'd Aug. 14, 2007) ("*LOI Response*").

⁹ See Letter from Kathryn S. Berthot, Chief, Spectrum Enf. Div., Enf. Bur., FCC to George Vizzachero, Five Star Taxi Dispatch (July 3, 2007).

¹⁰ *NAL*, 22 FCC Rcd at 18859. According to Five Star, the vendor responsible for filing its renewal application filed a renewal application for PLMRS station WPRK427, another license held by Five Star, which Five Star mistakenly believed was for the renewal of its taxi dispatch service license (WPNS752).

¹¹ *Id.* at 18860.

¹² *NAL Response* at 1.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ 47 U.S.C. § 503(b).

¹⁷ 47 C.F.R. § 1.80.

¹⁸ *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 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

¹⁹ 47 U.S.C. § 503(b)(2)(E).

and the *Forfeiture Policy Statement*. We conclude that Five Star willfully²⁰ and repeatedly²¹ violated Section 301 of the Act and Sections 1.903(a) and 1.949(a) of the Rules and that no mitigating circumstances warrant cancellation or further reduction of the proposed forfeiture amount.

6. Five Star does not dispute that it failed to file a timely renewal application for station WPNS752 or that its operation of this station was unauthorized, but states that these violations were unintentional. Specifically, Five Star asserts that because of its lack of knowledge of the renewal process, it mistakenly believed that its vendor had filed the correct renewal form and that its license had been renewed. As the Commission has held, however, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.²² In the context of a forfeiture action, “willful” does not require a finding that the rule violation was intentional. Rather, the term “willful” means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Rules.²³ Moreover, the Commission has long held that “licensees are responsible for the acts and omission of their employees and independent contractors,”²⁴ and has consistently “refused to excuse licensees from forfeiture penalties where the actions of employees or independent contractors have resulted in violations.”²⁵

7. Finally, although Five Star has been responsive and cooperative over the course of this investigation, such conduct does not justify cancellation of the forfeiture. All parties must fully cooperate and act with “complete candor” during Commission investigations.²⁶ Compliance with an ongoing Commission investigation does not nullify or mitigate any prior violation.²⁷ Five Star has not demonstrated that a reduction or cancellation of the proposed forfeiture is warranted. Accordingly, we

²⁰ Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”).

²¹ Section 312(f)(1) of the Act defines “repeated” as “the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(1). See also *Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

²² *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992); *Southern California*, 6 FCC Rcd at 4387 (stating that “inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358 (1986) (stating that “employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations”).

²³ See *Southern California*, 6 FCC Rcd at 4387. 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).

²⁴ *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64 (2002) (“*Eure*”); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34, 35 (1991); *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972).

²⁵ See *Eure*, 17 FCC Rcd at 21863-64; *Triad Broadcasting Company, Inc.*, Memorandum Opinion and Order, 96 FCC 2d 1235, 1244 (1984).

²⁶ See 47 C.F.R. §1.17.

²⁷ See *Southern California*, 7 FCC Rcd at 3455 (a licensee's “frank” response to a letter of inquiry did not warrant a downward adjustment as “complete candor” is required).

find that Five Star willfully and repeatedly violated Section 301 of the Act and Sections 1.903(a) and 1.949(a) of the Rules and that a forfeiture in the amount of \$6,500 is appropriate.

IV. ORDERING CLAUSES

8. 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,²⁸ Five Star Parking d/b/a Five Star Taxi Dispatch **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of six thousand five hundred dollars (\$6,500) for willful and repeated violation of Section 301 of the Act and Sections 1.903(a) and 1.949(a) of the Rules.

9. 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/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

10. 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.

11. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class 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, New York 11430-1206, Attention: George Vizzacchero, and to Haroon Akhtar, Operational Manager, Five Star Parking d/b/a Five Star Taxi Dispatch, P.O. Box 432, LaGuardia Airport, Flushing, New York 11371.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

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