

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

In the Matter of) File No.: EB-09-TP-0163
)
American Taxi Shuttle and Limo, Inc.) NAL/Acct. No.: 201032700002
)
Daytona Beach, Florida) FRN: 0019167477
)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 23, 2010

Released: September 24, 2010

By the District Director, Tampa Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL"), we find that American Taxi Shuttle and Limo, Inc. ("American Taxi"), apparently willfully and repeatedly violated section 301 of the Communications Act of 1934, as amended ("Act"),¹ by operating an unlicensed radio transmitter on the frequency 152.3900 MHz in Daytona Beach, Florida. We conclude, pursuant to section 503(b) of the Act,² that American Taxi is apparently liable for a forfeiture in the amount of twenty thousand dollars (\$20,000).

II. BACKGROUND

2. On September 27, 2009, in response to a complaint of unlicensed radio transmissions in Daytona Beach, Florida, agents from the Enforcement Bureau's Tampa Office ("Tampa Office"), used direction-finding techniques to locate the source of the transmissions on 152.3900 MHz to an antenna located at the business of American Taxi in Daytona Beach, Florida. The following day, on September 28, 2009, agents from the Tampa Office inspected the radio station at this location. The agents observed Motorola Maxtrac radios in operation.³ A review of the Commission's records revealed that American Taxi did not hold an authorization to operate on 152.3900 MHz at this location.⁴ The agents searched the Commission's records and determined that The Plaza Resort & Spa, call sign WQBS986, was licensed to operate on the frequency of 152.3900 MHz in Daytona Beach, Florida. During a telephone conversation with one of the agents, American Taxi's owner, claimed that he purchased his company's radios from The Plaza Resort & Spa. American Taxi's owner also claimed that he had a written agreement with The Plaza Resort & Spa for the use of 152.3900 MHz. However, when contacted by the agents prior to the inspection, The Plaza Resort & Spa confirmed that there were no verbal or written agreements with any other entities to

¹ 47 U.S.C. § 301.

² 47 U.S.C. § 503(b).

³ During the inspection, the agents did not learn the specific model of radios in use. On March 18, 2010, the agents contacted American Taxi's owner who stated that his company had at all times been using Motorola Maxtrac 100, Model # D43MJA73A5CK radios with FCC ID: ABZ89FT3730. These radios are not certified as non-licensed Part 15 devices. Thus, operation of these radios requires a license.

⁴ Subsequently, on December 8, 2009, American Taxi obtained an authorization in the Industrial Business Pool Service to operate from this location on the frequencies 153.335 MHz, 153.605 MHz, and 153.6875 MHz, with the call sign WQLC888.

use its assigned frequencies. When informed that The Plaza Resort & Spa had no record of any such agreement, American Taxi's owner stated that the agents had spoken with the wrong people. American Taxi's owner was unable, however, to provide an alternate contact within The Plaza Resort & Spa. The agents requested that the owner provide a copy of any agreement for the use of the frequency 152.3900 MHz as soon as possible. Prior to leaving the site, the agents verbally warned and issued an on-scene Notice of Unlicensed Operation ("NOUO") to American Taxi, advising the company that its unlicensed operation violated the Act and must cease immediately.

3. Also, on September 28, 2009, after the inspection and issuance of the verbal warning and a NOUO, the agents again heard unauthorized transmissions on 152.3900 MHz and used direction-finding techniques to locate the source of the transmissions to the same American Taxi location in Daytona Beach, Florida. The agents delivered a second verbal warning to American Taxi's owner regarding the unauthorized transmissions. The owner again claimed that his transmissions were authorized and stated his company would continue to operate on the frequency. The agents monitored 152.3900 MHz and observed additional transmissions by American Taxi after the second verbal warning was issued.

4. On November 22, 2009, in response to another complaint, the agents used direction-finding techniques to locate the source of unlicensed transmissions on 152.3900 MHz to an antenna located at American Taxi's location in Daytona Beach, Florida. A review of the Commission's records revealed that American Taxi did not hold an authorization to operate on 152.3900 MHz at this location.⁵ Moreover, to date, American Taxi has not provided any written agreement authorizing its use of The Plaza Resort & Spa's frequencies.

III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁶ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁷

6. Section 301 of the Act requires that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license.⁸ On September 27 and 28, 2009 and November 22, 2009, agents from the Tampa Office observed an unlicensed radio station operating on 152.3900 MHz from American Taxi's business in Daytona Beach, Florida. On September 28, 2009, American Taxi was warned repeatedly (both verbally and in writing) that its unlicensed operations violated the Act and could subject it to further enforcement action, including a substantial monetary forfeiture. Despite these

⁵ See note 4, *supra*.

⁶ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, 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...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

⁷ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that "[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."

⁸ 47 U.S.C. §301.

warnings, American Taxi nevertheless continued its unlicensed operations. Based on the evidence before us, we find that American Taxi apparently willfully and repeatedly violated section 301 of the Act by operating radio transmission apparatus without a license on the frequency 152.3900 MHz from its business in Daytona Beach, Florida on September 27 and 28 and November 22, 2009.

7. Pursuant to section 1.80 of the Rules, and the Commission's *Forfeiture Policy Statement*, the base forfeiture amount for operating a radio station without an instrument of authorization is \$10,000.⁹ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹⁰ Because American Taxi's owner repeatedly operated radio transmission equipment on frequencies for which he was not licensed with full knowledge that such activity violated the Act and the Rules,¹¹ we conclude an upward adjustment is warranted. Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that American Taxi is apparently liable for a forfeiture in the amount of \$20,000.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.311, 0.314 and 1.80 of the Rules, American Taxi Shuttle and Limo, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for violation of section 301 of the Act.¹²

9. **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*, American Taxi Shuttle and Limo, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. 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.¹³ 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. Payments 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. FCC Form 159 may be obtained at

⁹ 47 C.F.R. §1.80; *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) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999).

¹⁰ 47 U.S.C. § 503(b)(2)(E).

¹¹ See *Pilot Travel Centers, L.L.C.*, 19 FCC Rcd 23113, 23117 ¶17 (2004) (upwardly adjusting a proposed forfeiture to \$125,000 from an aggregate \$91,000 base amount, based on a finding that the retailer continued to market unauthorized devices after receiving citations, evincing "a pattern of intentional non-compliance with and apparent disregard for" the Commission's equipment rules).

¹² 47 U.S.C. § 301, 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80.

¹³ 47 U.S.C. § 504(a).

<http://www.fcc.gov/Forms/Form159/159.pdf>. 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. American Taxi Shuttle and Limo Inc. shall also send electronic notification to SCR-Response@fcc.gov on the date said payment is made.

11. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Rules. The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Tampa Office, 4010 W. Boy Scout Blvd., Suite 425, Tampa, Florida 33607, and must include the NAL/Acct. No. referenced in the caption. The statement should also be emailed to SCR-Response@fcc.gov.

12. 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. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to American Taxi Shuttle and Limo, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Ralph Barlow
District Director,
Tampa Office
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Enforcement Bureau