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**Federal Communications Commission**

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

In the Matter of	)	
	)	File No. EB-02-NY-128
	)	
All American Citywide Rainbow Transit, Inc.	)	NAL/Acct. No. 200332380001
WNLH895	)	
Long Island City, NY	)	FRN: 0007-5630-75

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: October 8, 2002**

By the District Director, New York Office, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that All American Citywide Rainbow Transit, Inc. ("Citywide Transit") has apparently violated Section 90.403(a)(2) of the Commission's Rules (the "Rules")<sup>1</sup>, by operating radio transmitting equipment on an unauthorized frequency of 155.265 MHz. We conclude that Citywide Transit is apparently liable for forfeiture in the amount of four thousand dollars (\$4,000).

**II. BACKGROUND**

2. On June 28, 2002, the FCC New York Office received a complaint of interference affecting the frequency 155.265 MHz, from an FCC licensed user.

3. On July 8, 2002, Commission agents, using direction finding techniques, positively identified the source of the interference on 155.265 MHz to Citywide Transit's transmitters located at 4-05 26<sup>th</sup> Avenue, Long Island City, NY 11102 and 11-08 30<sup>th</sup> Avenue, Long Island City, NY 11102. There was no evidence of a Commission authorization to operate this station on 155.265 MHz in Long Island City, NY.

4. On July 16, 2002, Commission agents observed radio operation on 155.265 MHz, and positively identified the source of the transmission to Citywide Transit at 4-05 26<sup>th</sup> Avenue, Long Island City, NY 11102. The agents conducted a station inspection and determined that Citywide Transit was licensed under call sign WNLH895 to operate only on a frequency of 155.235 MHz. The agents notified Citywide Transit of the violation.

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<sup>1</sup> 47 C.F.R. § 90.403(a)(2).

### **III. DISCUSSION**

5. Section 90.403(a)(2) of the Commission's Rules requires that licensees in the private land mobile radio services shall be directly responsible for the proper operation and use of each transmitter for which they are licensed. In this connection, licensees shall exercise such direction and control as to assure that the transmitter is being operated in a permissible manner. A review of Commission's records showed that Citywide Transit was granted authority under its license WNLH895 to operate only on a frequency of 155.235 MHz at 11-08 30<sup>th</sup> Avenue, Long Island City, NY 11102.

6. Based on the evidence before us, we find that All American Citywide Rainbow Transit, Inc. operated radio transmitting equipment on an unauthorized frequency of 155.265 MHz on July 8, 2002 and July 16, 2002, in willful<sup>2</sup> and repeated<sup>3</sup> violation of Section 90.403(a)(2) of the Rules.

7. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*")<sup>4</sup>, sets the base forfeiture amount for using an unauthorized frequency at \$4,000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended, ("Act")<sup>5</sup> which include 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 other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a four thousand dollar (\$4,000) monetary forfeiture is warranted.

### **IV. ORDERING CLAUSES**

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act<sup>6</sup> and Sections 0.111, 0.311 and 1.80 of the Rules<sup>7</sup>, All American Citywide Rainbow Transit, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of four thousand dollars (\$4,000) for willfully violating Section 90.403(a)(2) of the Commission's Rules.

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<sup>2</sup> Section 312(f)(1) of the Act, 47 U.S.C. 312(f)(1), which applies to 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 ...." *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>3</sup> Section 312(f)(2), which also applies to Section 503(b), provides: [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.

<sup>4</sup> 47 C.F.R. § 1.80.

<sup>5</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> 47 C.F.R. §§ 0.111, and 0.311.

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9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, All American Citywide Rainbow Transit, 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 may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332380001 and FRN: 0007-5630-75.

11. Any response to this NAL must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200332380001.

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. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>8</sup>

14. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the [relevant Division]. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

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<sup>8</sup> See 47 C.F.R. § 1.1914.

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15. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to All American Citywide Rainbow Transit, Inc., 11-08 30<sup>th</sup> Avenue, Long Island City, NY 11102.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel  
District Director  
New York Office