

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

In the Matter of)	
)	
ROADRUNNER TRANSPORTATION, INC.)	
)	
Licensee of Land Mobile Radio)	
Stations WPHA757 (Golden, CO); WPEM630)	
(Minneapolis, MN); WPHK945 (Dallas, TX);)	
WPJH296 (Minneapolis, MN); WPJH286)	
(Minneapolis, MN); WPHZ532 (New York, NY);)	NAL/Acct. No. 920EF0034
WPLQ863 (Kansas City, MO);)	
WQP225 (Minneapolis, MN); KGS652)	
(St. Paul, MN); WNZB829 (Minneapolis, MN); and)	
WNBU955 (Minneapolis, MN).)	
)	
DYNAMEX OPERATIONS EAST, INC.)	
)	
Licensee of Land Mobile Radio)	
Stations KNAR463 (Columbus, OH);)	File No. 920EF0035
WBW639 (Chicago, IL); WNMO605 (Chicago, IL);)	
WZU391 (Columbus, OH); and KRJ449 (Chicago, IL.))	
)	
CITY COURIER, INC.)	
)	
Licensee of Business Radio Service Station WPIF201)	File No. 920EF0036
(New York, NY))	
)	
EASTSIDE/WESTSIDE, INC.)	
)	
Licensee of Industrial/Land Transportation Radio)	File No. 920EF0037
Service Station WNUD737 (Minneapolis, MN))	

FORFEITURE ORDER

Adopted: May 31, 2000

Released: June 5, 2000

By the Commission:

I. Introduction

1. In this order, we grant, in part, the “Request for Cancellation or Reduction of Proposed Forfeiture” filed jointly on July 6, 1999 by Roadrunner Transportation, Inc. (Roadrunner), Dynamex Operations East, Inc. (DOE), City Courier, Inc. (City Courier) and Eastside/Westside, Inc. (Eastside/Westside) (collectively, “Licensees”), licensees of the above-captioned Private Land Mobile Radio Service (PMRS) stations. We conclude that the Licensees transferred or acquired control of the above-captioned stations without obtaining the requisite authority from the Commission, in apparent willful and repeated violation of Section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(d), and former Section 90.153 of the Commission's rules, 47 C.F.R. § 90.153.¹ While we reject the Licensees’ arguments that no forfeiture should be imposed, we believe that reductions in the forfeitures imposed against Roadrunner and DOE are warranted. Accordingly, we find the Licensees liable for forfeitures in the following amounts: Roadrunner, \$22,000; DOE, \$10,000; City Courier, \$4,000; and Eastside/Westside, \$4,000.

II. Background

2. Dynamex, Inc. (Dynamex) and DOE operate courier services in various locations throughout the United States. Roadrunner, DOE, City Courier, and Eastside/Westside are subsidiaries of Dynamex. On March 27, 1998, and March 30, 1998, Dynamex and DOE, respectively, filed requests for Special Temporary Authority (STA) to operate the 18 captioned PMRS stations. In the transmittal letters that accompanied their requests for STAs, which were nearly identical, Dynamex and DOE revealed to the Commission that since 1996, they had acquired control of the referenced stations without having obtained prior Commission approval.

3. The two companies indicated that the unauthorized transactions had taken the form of stock or asset acquisitions by Dynamex, with subsequent merger into DOE; or stock acquisitions by Dynamex, whereby the acquired entity became a subsidiary of Dynamex. According to the information provided in the STA requests, Dynamex concedes that, since 1996, without prior Commission approval, it acquired the stock of Roadrunner, doing business under the names Am Express, Inc., (for Stations WPHA757, WPEM630 and WPHK945); Desert Bird (for Stations WPJH296 and WPJH286); Sky & Highway (for Station WNZB829); Twin City Express (for Station WNBU955), and in its own name (for Stations WNUD737, WPLQ863, WQP225, and KGS652). Dynamex also admits that it acquired the stock of City Courier and Eastside/Westside without Commission approval. All of these companies became wholly owned subsidiaries of Dynamex. Similarly, DOE concedes that, since 1996, without prior Commission consent, it acquired the assets of: Drayage Services, former licensee of Station KNAR463; Metro Messenger Service, Inc., former licensee of Stations WBU639 and WNMO605; Seidel Enterprises, Inc., former licensee of Station WZU391; and Seko Enterprises, former licensee of Station KRJ449.

4. In support of their requests for STAs, the companies represented that their failures to obtain prior Commission approval of the transactions were inadvertent. According to Dynamex and DOE, “[t]his error was

¹ 47 C.F.R. § 90.153. That rule was replaced by Section 1.948 of the Commission’s rules on February 16, 1999. *In the Matter of Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, 13 FCC Rcd 21027 (1998). During the period prior to the time that Dynamex and DOE filed their applications, however, Section 90.153 of the Commission’s rules was the pertinent rule.

due, in part, to the rapid expansion of the business and the number of entities involved. Even more regrettably, although Dynamex . . . had experienced a similar situation two years ago . . . [its] licensing procedures were not effectively communicated to the pertinent employees involved in the subject acquisitions.”² Dynamex and DOE stated in their respective STA requests that, to ensure future compliance, they had requested their counsel to develop clear and concise guidelines regarding radio license acquisitions, which they intended to distribute to all employees involved in future acquisitions.

5. In addition to seeking STAs for each of the stations, which were granted on July 22, 1998, Dynamex and DOE, on April 3, 1998, filed applications for consent to transfer control of or to assign the licenses in question. Those applications were granted between September 29, 1998 and October 7, 1998.³

6. On June 4, 1999, the Commission found the Licensees apparently liable for forfeitures in the following amounts: Roadrunner (\$44,000), DOE (\$20,000), City Courier (\$4,000), and Eastside/Westside (\$4,000). *Roadrunner Transportation, Inc.*, 14 FCC Rcd 9311 (1999) (“NAL”). The Licensees jointly filed their response to the NAL on July 6, 1999.

III. Discussion

7. In their response, the Licensees do not deny that they violated Section 310(d) of the Act and former Section 90.153 of the Commission’s rules by acquiring control of the above-referenced station without obtaining Commission approval. They argue, however, that the NAL improperly imposed a forfeiture for conduct occurring more than one year from the date of the NAL, in violation of Section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6). The Licensees also argue that the proposed forfeitures are excessive in light of the noncommercial status of the facilities and the fact that the stations were incidental to the transaction in question.

8. We reject the Licensees’ first argument because it misconstrues the NAL. The Licensees are correct that the Commission may not issue a forfeiture against a wireless licensee for a violation that occurred more than one year prior to the issuance of the notice of apparent liability. *See* 47 U.S.C. § 503(b)(6)(B). In this case, the Licensees were found to be apparently liable for a forfeiture for the period from June 1, 1998 (one year prior to adoption of the NAL) until, at the earliest, September 29, 1998, when the Commission first granted its consent to the transfer of control of some of the stations at issue.⁴ While the Commission may not, in this case, find the Licensees liable for violations committed prior to June 1, 1998, it may lawfully look at facts arising before that date in determining an appropriate forfeiture amount. In *Eastern Broadcasting Corp.*, 10 FCC 2d 37 (1967), the

² Dynamex STA Request at 1; *see also* DOE STA Request at 1.

³ The Commission granted its consent to the transfer of control of Stations WPHA757, WPEM630, WPHK945, WPIF201, WPJH286, WPJH296, WPHZ532, WNUD737, WPLQ863, WQP225, KGS652, and WNZB829 on September 29, 1998. The Commission consented to the transfer of control of Station WNBU955 on October 1, 1998. The Commission consented to the assignment of licenses for Stations WBU639, WNMO605, WZU391, and KRJ449 to DOE on October 1, 1998. The Commission consented to the assignment of license of Station KNAR463 to DOE on October 7, 1998.

⁴ The Licensees suggest that no forfeiture can be granted after they received special temporary authority to operate the stations on July 22, 1998. Licensee Response, pp. 4-5 n.8. For purposes of this Order, the end point of the violation is July 1998. This fact, however, has no impact on our analysis since the violations started in 1996 and continued into the period within the statute of limitations.

Commission held that it could consider acts of a station manager that occurred outside the statute of limitations in determining the appropriate forfeiture for acts that occurred inside the statute of limitations. The Commission held that it could consider matters occurring outside the statute of limitations period in determining a licensee's "degree of culpability." Similarly, in *Cate Communications Corporation*, 60 RR 2d 1386 (1986), the Commission considered facts prior to the statute of limitations period in considering the appropriate forfeiture amount for a continuing transfer of control. The Commission held that such facts placed "the violations in context, thus establishing the licensee's degree of culpability and the continuing nature of the violations." Similarly, in this case, we used the fact that the violations began in 1996 to establish the context for determining an appropriate forfeiture amount for the violations that were subject to a forfeiture from June 1, 1998 forward. Accordingly, the Licensees' argument that the NAL violated the statute of limitations must be rejected.

9. With respect to the Licensees' second argument, the Licensees point to the noncommercial status of the facilities and the fact that they voluntarily disclosed their violations as mitigating factors. While we agree with the Licensees that those factors support mitigation of the forfeiture, the Commission considered them in determining the appropriate amount of the forfeiture in the NAL. See NAL, 14 FCC Rcd at 9315 ¶8. Moreover, as noted in the NAL, there are several aggravating factors that support an increased forfeiture amount, including the duration of the violations, the admitted prior violation, and the fact that the Licensees engaged in multiple transfers involving a number of stations.

10. Nonetheless, we believe a reevaluation of the forfeiture amount is appropriate. The forfeiture amounts in the NAL were calculated by multiplying \$4,000 times the number of stations at issue for each company. After the NAL in this case was issued, we considered *Central Illinois Public Service Company*, 15 FCC Rcd 1750, 1753 (1999), and declined to engage in a strict mathematical exercise of multiplying a base forfeiture amount for a violation times the number of stations involved because doing so "would result in an excessive forfeiture amount and would be inconsistent with prior enforcement actions." Instead, we determined that the number of stations involved should be treated as an aggravating factor warranting an increased forfeiture. We believe the forfeiture amounts in the instant case should be recalculated using this approach.

11. In *Central Illinois*, we imposed a \$30,000 forfeiture for an unauthorized substantial transfer of control of 88 private land mobile and microwave stations. The transfer took place in one transaction, and approximately three and a half-months passed between the transfer and the time the Commission was notified. In both cases, the violations were voluntarily disclosed to the Commission. This case involves substantially fewer stations than *Central Illinois*. On the other hand, the violations in this case took place over a substantially longer period of time (two years passed before the Commission was informed of the transfers of control), they involved multiple transactions, and the Licensees admit that Dynamex engaged in a prior violation of the same rule. On balance, we believe that a slightly higher total forfeiture than we imposed in *Central Illinois* is warranted.

12. The Licensees also argue that the forfeiture proposed in the NAL is inconsistent with the \$20,000 forfeiture imposed in *Puget Sound Energy, Inc.*, 14 FCC Rcd 9111 (WTB 1999). *Puget Sound* involved a substantial transfer of control of 125 stations that lasted almost two months before the licensee voluntarily notified the Commission of the violation. As with *Central Illinois*, there are fewer stations involved, but we believe the longer duration of the violations, the existence of multiple substantial transfer of control transactions, and the admission of the prior violation outweigh the fact that fewer stations are involved in this case. In light of all the circumstances of this case, we believe a total forfeiture of \$40,000 is appropriate and consistent with the *Central Illinois* and *Puget Sound* cases. We allocate the forfeitures as follows: \$22,000 to Roadrunner, \$10,000 to DOE, and \$4,000 each to City Courier and Eastside/Westside.

IV. Ordering Clauses

13. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.80(f)(4) of the Commission's rules, 47 C.F.R. § 1.80(f)(4), Roadrunner Transportation, Inc., Dynamex Operations East, Inc., City Courier, Inc., and Eastside/Westside, Inc. ARE LIABLE FOR MONETARY FORFEITURES in the amounts of \$22,000, \$10,000, \$4,000, and \$4,000, respectively, for their willful and repeated violations of Section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(d), and former Section 90.153 of the Commission's rules, 47 C.F.R. § 90.153.

14. Payment of the forfeitures shall be made in the manner provided for in Section 1.80 of the Commission's 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, 47 U.S.C. § 504(a). Payment may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. Nos. referenced above. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554. See 47 C.F.R. § 1.1914.

15. IT IS FURTHER ORDERED that copies of this Notice shall be sent, by Certified Mail/Return Receipt Requested, to counsel for the Licensees, Pamela Geary, Esq., Lukas, McGowan, Nace & Gutierrez, Chartered, 1111 19th Street, N.W., Suite 1200, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary