

Federal Communications Commission

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

In the Matter of)	
)	File No. EB-03-NY-001
Star Car Service)	
WPVU671)	NAL/Acct. No. 200432380002
Bronx, NY)	
)	FRN: 0006 8587 16

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 24, 2003

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

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Star Car Service ("Star"), apparently violated Section 1.903(a) of the Commission's Rules (the "Rules"),¹ by operating a base station transmitter and mobile units on unauthorized frequencies of 451.500 MHz and 151.845 MHz. We conclude that Star is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000).

II. BACKGROUND

2. On December 19, 2002, the FCC New York Office received a complaint of interference affecting the frequency 451.500 MHz, from an FCC licensed user.

3. On January 7, 2003, a Commission agent, using a mobile direction finding vehicle, monitored the frequency 451.500 MHz in Bronx, NY, and positively located the source of interference to Star, located at 1301 Boston Road, Bronx, NY 10456. The agent advised the dispatcher on duty that Star was operating their base station and mobile units on an unauthorized frequency of 451.500 MHz. There was no evidence of a Commission authorization for Star to operate a base station and mobile units on 451.500 MHz in Bronx, NY.

4. On January 9, 2003, a Commission agent advised Star's manager, Keba Nguer that Star was operating their base station and mobile units on an unauthorized frequency of 451.500 MHz.

¹ 47 C.F.R. § 1.903(a).

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5. On January 10, 2003, the New York Office sent a Notice of Violation, by First Class and Certified Mail Return Receipt Requested, to Star for operation on an unauthorized frequency of 451.500 MHz.

6. On January 27, 2003, the New York Office received Star's reply to the Notice of Violation stating that on January 18, 2003, their base and mobile frequency, currently on 451.500 MHz, was changed to 464.350 MHz and 469.350 MHz, the respective base and mobile licensed frequencies.

7. On April 30, 2003, a Commission agent, using a mobile direction finding vehicle, monitored the frequency 151.845 MHz in connection with an investigation concerning use of unauthorized frequencies in the Private Land Mobile Radio Service. The agent positively determined that Star, located at 1301 Boston Road, Bronx, NY 10456, operated a base station and mobile units on a frequency of 151.845 MHz. There was no evidence of a Commission authorization for Star to operate a base station and mobile units on 151.845 MHz in Bronx, NY.

8. On May 2, 2003, Commission agents, using a mobile direction finding vehicle, monitored the frequency 151.845 MHz, and again determined that Star, located at 1301 Boston Road, Bronx, NY 10456, operated a base station and mobile units on a frequency of 151.845 MHz. The agents conducted a station inspection with one of the owners, Abdoulaye Camare, and advised him that Star's base station and mobile units were operating on an unauthorized frequency of 151.845 MHz.

III. DISCUSSION

9. Section 1.903(a) of the Rules requires that "Stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service as set forth in this title and with a valid authorization granted by the Commission under the provisions of this part." 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 Star Car Service was granted authority under its license, WPVU671, to operate one base station on a frequency of 464.350 MHz, one control station and 50 mobile units on a frequency of 469.350 MHz. Agents observed the base station and mobile units operating on 451.500 MHz, and later on 151.845 MHz.

10. Based on the evidence before us, we find that Star operated a base station and mobile units on an unauthorized frequency of 451.500 MHz on January 7, 2003, and 151.845 MHz on, April 30, 2003 and May 2, 2003, in willful² and repeated³ violation of Section 1.903(a) of the Rules.

11. *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

² 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).

³Section 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.

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303(1999) (“*Forfeiture Policy Statement*”),⁴ 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,⁵ (“Act”) 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

12. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁶ and Sections 0.111, 0.311 and 1.80 of the Rules,⁷ Star is hereby NOTIFIED of their APPARENT LIABILITY FOR A FORFEITURE in the amount of four thousand dollars (\$4,000) for willfully and repeatedly violating Section 1.903(a) of the Rules.

13. 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, Star SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

14. 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. 200432380002 and FRN: 0006 8587 16.

15. Any response to this NAL must be mailed to Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200432380002.

16. 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.

⁴47 C.F.R. § 1.80.

⁵47 U.S.C. § 503(b)(2)(D).

⁶47 U.S.C. § 503(b).

⁷47 C.F.R. §§ 0.111, and 0.311.

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17. 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. 20554.⁸

18. 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 Spectrum Enforcement 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.

19. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Star Car Service, 1301 Boston Road, Bronx, NY 10456.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel
District Director
New York Office

Attachment A – Condensed List of Small Entities, October 2002

⁸ See 47 C.F.R. § 1.1914.