

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Notice of Apparent Liability for Forfeiture of
TEL-A-CAR OF NEW YORK, INC.
Licensee of Specialized Mobile Radio Station WYQ527,
Long Island City, New York
File No. 020EF0014

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: November 4, 1999

Released: November 4, 1999

By the Deputy Chief, Enforcement and Consumer Information Division, Wireless Telecommunications Bureau:

I. Introduction

1. This is a Notice of Apparent Liability for Forfeiture, pursuant to Section 503(b) of the Communications Act of 1934, as amended (the "Act") and Section 1.80 of the Commission's Rules against Tel-A-Car of New York, Inc. ("Tel-A-Car"), licensee of Specialized Mobile Radio Station WYQ527, Long Island City, New York. For the reasons that follow, we find that Tel-A-Car apparently failed to identify Station WYQ527 during its radio transmissions, in apparent violation of Section 90.425(e)(2) of the Commission's Rules. We conclude that Tel-A-Car is apparently liable for a forfeiture in the amount of \$2,000.

II. Background

2. Tel-A-Car operates a limousine service in the New York City area. It shares the frequency pair 808.7375 MHz (mobile)/853.7375 MHz (base) with Battery City Car and Limousine Service, Inc. ("Battery"), licensee of Station WNDV558, New York, New York. Battery also operates a limousine service in the New York City area. In March 1997, Tel-A-Car filed the first of several complaints with the

1 47 U.S.C. § 503(b).

2 47 C.F.R. § 1.80.

3 47 C.F.R. § 90.425(e)(2).

4 See Letters dated March 25, 1997, June 22, 1998, and June 9, 1999, from Thomas K. Crowe (counsel for Tel-A-Car) to the Secretary of the Federal Communications Commission.

Commission alleging that Battery was disrupting Tel-A-Car's communications by operating with an excessive number of mobile units on the frequency 808.7375 MHz and by failing to monitor before transmitting. Accordingly, on July 13, 16, 28 and 29, 1998, Commission personnel monitored the communications on the shared frequency 808.7375 MHz.

3. As a result of that monitoring, enforcement action was take against Battery. It was, however, also determined that Tel-A-Car apparently was not complying with the Commission's station identification requirements. Accordingly, on September 10, 1998, the Wireless Telecommunications Bureau issued a letter admonishing Tel-A-Car for this apparent violation.<sup>5</sup> In its September 28, 1998, response to the admonishment, Tel-A-Car promised to henceforth comply with the Commission's station identification requirements.

4. Commission personnel again monitored the shared frequencies 808.7375 MHz (mobile) and 853.7375 MHz (base) on May 3 and 4, 1999. The information before us indicates that between 9:54 a.m. and 10:48 p.m. on May 3, 1999, and between 11:05 a.m. and 11:03 p.m. on May 4, 1999, Commission personnel again observed unidentified communications from Tel-A-Car's station.

### III. Discussion

5. Section 90.425(e)(2) of the Commission's Rules<sup>6</sup> provides in pertinent part that, for CMRS stations, "the call sign must be transmitted within five minutes of the hour or upon completion of the first transmission after the hour." Based on the monitoring that was performed on May 3 and 4, 1999, it appears that Tel-A-Car willfully and repeatedly failed to provide the required station identification, in apparent violation of Section 90.425(e)(2) of the Commission's Rules.<sup>7</sup> Under Section 503(b) of the Act, a forfeiture may be imposed against any person who willfully or repeatedly fails to comply with any Commission rule. For purposes of Section 503(b), the term "willful" means that the violator knew it was taking the action in question, regardless of whether there was an intent to violate the Commission's Rules.<sup>8</sup>

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<sup>5</sup> Letter of September 10, 1998, from Gary P. Schonman to Tel-A-Car's counsel, Thomas K. Crowe. The Bureau, on August 31, 1998, also issued a Notice of Apparent Liability for Forfeiture against Battery for its apparent violations of Sections 90.113 and 90.135(a)(5) of the Commission's Rules (operating in excess of the 17 authorized mobile units) and Section 90.425(a) of the Commission's Rules (failure to provide station identification). On December 23, 1998, the Bureau determined that Battery had violated those rules and ordered Battery to forfeit \$20,000. In an order released August 11, 1999, the Commission affirmed the monetary forfeiture. Battery's petition for reconsideration is now pending before the Commission.

<sup>6</sup> 47 C.F.R. § 90.425(e)(2).

<sup>7</sup> *Id.*

<sup>8</sup> See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

6. The guidelines contained in the Commission's *Forfeiture Policy Statement*<sup>9</sup> specify a base forfeiture amount of \$1,000 for failure to provide station identification. The *Forfeiture Policy Statement*, however, permits the Commission to issue a higher or lower forfeiture than provided in the guidelines.<sup>10</sup> The criteria specified by the *Forfeiture Policy Statement* authorize an upward adjustment of the base forfeiture amount for a "repeated or continuous violation." In this case, Tel-A-Car continued its noncompliance despite an earlier warning and its promise to comply.<sup>11</sup> We, therefore, find that the appropriate proposed forfeiture amount for Tel-A-Car's apparent violations is \$2,000.

#### IV. Conclusion and Ordering Clauses

8. Based on the foregoing, we find that Tel-A-Car failed to identify Station WYQ527, in apparent willful and repeated violation of Section 90.425(e)(2) of the Commission's Rules.<sup>12</sup> We conclude that a forfeiture in the amount of \$2,000 is appropriate.

9. ACCORDINGLY, pursuant to Section 503(b) of the Communications act of 1934, as amended,<sup>13</sup> and Section 1.80 of the Commission's Rules<sup>14</sup>, Tel-A-Car of New York, Inc., is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of two thousand dollars (\$2,000) for repeatedly and willfully violating Section 90.425(e)(2) of the Commission's Rules.<sup>15</sup>

10. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules<sup>16</sup>, that within thirty days of the release of this Notice, Tel-A-Car SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.<sup>17</sup>

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<sup>9</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17114 (1997).

<sup>10</sup> *Id.*, at 17112.

<sup>11</sup> See FCC 99-212, *supra*, at para. 13.

<sup>12</sup> 47 C.F.R. § 90.425(e)(2).

<sup>13</sup> 47 U.S.C. § 503(b).

<sup>14</sup> 47 C.F.R. §1.80.

<sup>15</sup> 47 C.F.R. § 90.425(e)(2).

<sup>16</sup> 47 C.F.R. §1.80.

<sup>17</sup> Payment of the forfeiture may be made by credit card through the Commission's Billings and Collections Branch 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 file number of this proceeding.

11. IT IS FURTHER ORDERED that copies of this Notice shall be sent, by Certified Mail, Return Receipt Requested, to Tel-A-Car of New York, Inc., at 30-55 Vernon Boulevard, Long Island City, NY 11102

and to Tel-A-Car's counsel, Thomas K. Crowe, Esq., at 2300 M Street, N.W., Suite 800, Washington, D.C. 20037.

FEDERAL COMMUNICATIONS COMMISSION

Myron Peck  
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Wireless Telecommunications Bureau