



Barry L. Kluger  
Inspector General

**Office of the Inspector General**  
Metropolitan Transportation Authority  
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New York, New York 10121  
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April 7, 2016

Veronique Hakim  
President  
MTA New York City Transit  
2 Broadway, 30<sup>th</sup> Floor  
New York, NY 10004

**Re: Sale and Use of Unauthorized  
Portable Radios  
MTA/OIG #2016-04**

Dear Ms. Hakim:

The Metropolitan Transportation Authority (MTA) Office of the Inspector General (OIG) has completed its investigation into an allegation that MTA New York City Transit (NYC Transit) Department of Subways Train Service Supervisor Hon Lui (Lui) sold unauthorized radios and flashlights to numerous employees, including NYC Transit Train Operators Steven Koch (Koch) and Abie Junious (Junious). Our investigation substantiated the allegation regarding unauthorized radios only. Based on our findings, we recommend that NYC Transit impose discipline on Lui, up to and including termination. We further recommend that NYC Transit impose discipline on Koch and Junious, commensurate with the gravity of their misconduct, as it deems appropriate.

OIG has also completed its investigation into a separate allegation that NYC Transit Train Service Supervisor David Perl (Perl) also sold unauthorized radios to NYCT Train Operators. Our investigation substantiated the allegation. Based on our findings, we recommend that NYC Transit impose discipline on Perl, up to and including termination.

Finally, our investigation has substantiated that several additional NYC Transit employees either bought or sold unauthorized portable radios, suggesting that it was a common practice. We have discussed this issue with Barry Greenblatt, NYC Transit Acting Field Chief for Field Operations, and are aware that he immediately imposed remedial action.

### INVESTIGATION

OIG staff interviewed several NYC Transit employees about the purchase, sale and use of unauthorized radios including, Lui, Koch, Junious and Perl. OIG staff also interviewed NYC Transit management about the safety implications of the use of unauthorized radios including interference with emergency communications among the Rail control Center, employees on trains and employees along the right of way.

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Lui was hired by NYC Transit as a Train Conductor on February 26, 2001. He was promoted to his current position of Train Service Supervisor (TSS) on May 1, 2011, and is currently assigned to the "L" subway line.

Koch was originally hired by NYC Transit on June 25, 1987 as a Train Operator. He resigned in 1996 and was rehired as a Train Operator in February 2001. He is currently assigned to the "L" subway line.

Junious was hired by NYC Transit on April 19, 1999, as a Train Conductor and has been a Train Operator since June 2007. He is currently assigned to the "B" subway line, but prior to December 6, 2015, was assigned to the "L" subway line.

On December 14, 2015, OIG staff interviewed Lui and asked if he knew anything about train operators or conductors carrying unauthorized radios. Lui stated, in substance, the NYC Transit-issued ICOM radios were not reliable, did not properly function at times, and that some employees used "back up" radios. He stated the backup radios worked better than the NYC Transit-issued radios.

Lui stated he bought a Chinese-made Baofeng radio on the internet some time ago which he personally used at work as a backup. He stated that it used the NYC Transit frequency and was capable of receiving and transmitting communications just like the NYC Transit-issued ICOM radio. It was his opinion that the Baofeng radio performed better than the NYC Transit-issued radio. Baofeng made many different radio models and they cost between thirty and seventy dollars each.

When asked about the allegation that he was selling radios and flashlights to NYC Transit workers, Lui admitted that he had sold radios, but denied ever selling any flashlights. He stated that, over the past several years, other NYC Transit workers had seen his Baofeng radio and asked him where they could get one. Lui stated he purchased similar radios on various Internet sites for co-workers who requested them. Lui stated he made a profit of between five and ten dollars per radio. He stated he occasionally had to program the radios so that they could receive and transmit over NYC Transit frequencies, and he charged five dollars extra for that service.

Lui estimated he sold approximately 50 radios over the last two years to NYC Transit Train Operators and Conductors. He admitted he conducted most of the sales during working hours at the Dispatcher's Office and the Crew Room located at the Canarsie-Rockaway Parkway stop on the "L" Line. Lui claimed he could not provide the names of the employees who purchased radios from him and stated he might have sold to Koch and Junious but claimed he did not specifically remember them.

On December 17, 2015, OIG investigators interviewed Koch. When asked if he knew anything about NYC Transit personnel using unauthorized radios, he stated some train conductors and operators carried backup radios and sometimes flashlights that they purchased privately and brought to work. He stated he purchased a Baofeng radio from TSS Lui in January 2014 at the

Dispatcher's Office on the Canarsie-Rockaway Parkway "L" Line during work hours because he had heard from other train operators that Lui was selling the radios. Koch stated Lui charged him \$45 and told Koch he had programmed the radio so it could receive and transmit on NYC Transit frequencies. Lui told Koch it was done with a software program. Koch stated he carried the Baofeng radio in addition to his NYC Transit-issued ICOM radio. Koch stated he lost the radio he bought from Lui at work sometime in January or February 2015. Koch added he heard that Lui might be selling flashlights, but did not purchase any from him.

On December 17, 2015, OIG investigators interviewed Junious. When asked if he knew anything about NYC Transit personnel using unauthorized radios, Junious stated some train conductors and operators carried backup radios and sometimes flashlights that they purchased privately and brought to work.

Junious stated he previously carried a backup radio, but no longer does. When asked where he obtained the backup radio, Junious stated he bought it while at work about six months earlier. Junious stated he heard from other train operators that Lui was selling backup portable radios at the Canarsie-Rockaway Parkway Dispatcher's Office.

Junious stated he spoke to a TSS he identified only as "Isaac"<sup>1</sup> about getting a radio from Lui. He stated Isaac contacted Lui, who left a radio for Junious at the Dispatcher's desk in Canarsie. Junious stated he was not sure who the Dispatcher was, but Junious left \$40 or \$45 dollars with him and took possession of the radio. Junious stated the radio was a Baofeng two-way radio which was capable of receiving and transmitting on NYC Transit frequencies. He stated Lui did not personally sell him the radio, but he knew it was from him. He added he did not know if Lui was selling flashlights.

On December 23, 2015, OIG staff contacted Barry Greenblatt, Acting Field Chief for Field Operations, NYC Transit, and advised him that our investigation substantiated the sale and use of unauthorized radios by a NYC Transit Supervisor to NYC Transit employees. Greenblatt agreed to take immediate remedial action. To that end, he reissued Bulletin #58-15 (as new Bulletin #04-16 detailed below) reminding all personnel that the use/possession of portable radios other than NYC Transit-issued ICOM radios was strictly prohibited.

On January 13, 2016, OIG investigators interviewed Perl. When asked if he knew anything about train operators or conductors carrying unauthorized radios and/or flashlights Perl stated he knew many NYC Transit personnel who used backup radios. He said there were train operators, conductors and supervisors who carried them in addition to their regular radios. He said the radios seem to work better than the NYC Transit-issued ICOM radios.

Perl stated that, sometime in late 2013, he purchased a Baofeng backup radio for himself from a NYC Transit Signal Maintainer he identified as "Liang."<sup>2</sup> He purchased the radio on the

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<sup>1</sup> OIG Investigators later identified "Isaac" as Train Service Supervisor Clarence Isaac.

<sup>2</sup> OIG Investigators identified "Liang" as Signal Maintainer Liang Shwe; however, he is out on extended sick leave and was not available for an interview.

subway platform at 57th Street and 7th Avenue Station in Manhattan and paid \$45.00 for the radio. He stated he carried it as a backup and only used it if his primary radio was not performing well. He stated the backup radio used the NYC Transit frequency and was capable of receiving and transmitting the same as the NYC Transit-issued ICOM radio. It was his opinion that the Baofeng radio performed better than the NYC Transit-issued one.

OIG staff asked Perl about the allegation that he was selling unauthorized radios to NYC Transit workers. Perl replied that he provided radios to approximately ten NYC Transit employees who had seen his Baofeng radio and wanted one. Perl did not consider his conduct “selling” since he did not make a profit.<sup>3</sup> He stated that these transactions occurred between Feb 2014 and July 2015. Perl said he would call Liang and they would meet at either the 57th Street/7th Ave subway station or in Perl’s office at DeKalb Tower. The employee-buyers gave Perl \$45, which Perl gave to Liang, and the employees picked up the radios from Perl at DeKalb Tower. Perl stated he did not receive any profit or other benefit from these transactions and never thought he was doing anything wrong by helping fellow employees get the radios.

On February 26, 2016, OIG staff interviewed Leonard Ciaccio, Chief Electronics Maintenance Officer, NYC Transit, regarding safety implications of the use of unauthorized radios. Ciaccio stated that radios are safety-sensitive devices that are used to communicate with employees on trains and along the right-of-way. As a result, it is extremely important to guarantee communications at critical times and the authorized devices are tested to ensure that they meet NYC Transit’s standards to ensure performance. Further, unauthorized radios have the potential to cause interference with authorized radios for numerous reasons, including being overpowered, underpowered, poorly regulated, poor frequency control, etc. Ciaccio stated that the ICOM radios were reliable and performed well and that they never had any bandwidth or capacity issues. Ciaccio further stated that there were no systemic problems with the radios, but NYC Transit employees could get their radios repaired or replaced if they had problems with their radios. Ciaccio provided OIG with statistics documenting a low repair/replacement rate for NYC Transit ICOM radios: out of over 13,000 radios issued, there were only approximately 700 repairs in 2015 for various reasons, mostly for issues relating to switches/knobs/buttons, antennae/cases/batteries or PCB-related defects.

#### *NYC Transit Rules and Regulations and Policy/Instructions*

NYC Transit Rules and Regulations, Rule 102, states, in pertinent part: Train Service Supervisors have general supervision over the qualification and performance of all Train Operators, Conductors and Tower Operators. They must observe the manner in which train service employees perform their duties and correct any improper actions. They must report promptly any violations of the rules or any neglect of duty on the part of employees.

NYC Transit Rules and Regulations, Rule 32, states, in pertinent part: The conduct of commercial activities on any transit facility or conveyance is prohibited.

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<sup>3</sup> Under New York State law, Perl’s exchange of money for a radio constitutes a sale.

NYC Transit Rules and Regulations, Rule 11(h), states, in pertinent part, While on duty or on the premises of the System, employees must not solicit or accept for personal gain or any other cause, any fee, reward or remuneration from passengers or fellow employees.

NYC Transit Rapid Transit Operations Policy/Instructions (issued 2/17/05) Policy 1.1 states, in pertinent part, "It is the policy of Rapid Transit Operations to provide reliable communications to enhance the safety of the services it provides. To that end, each operating employee (Train Operators, Conductors, Train Service Supervisors and Managers) is assigned a portable hand-held train radio, and a reliable supply of spare radios is maintained." Policy 5.1 states, in pertinent part, "If an employee experiences a problem with his/her assigned radio, it must be brought to the attention of a Supervisor as soon as possible."<sup>4</sup>

MTA NYC Transit Rapid Transit Operations Bulletin #115-11 (dated August 17, 2011) states, in pertinent part, "All Rapid Transit Operations employees are reminded that radios issued to them **MUST NOT** be used with unauthorized accessories. These radios have been tested and the accessories that are issued with the radios (batteries, antennas, etc.) have been approved as **Intrinsically Safe.**" (emphasis in original)<sup>5</sup>

MTA NYC Transit Rapid Transit Operations Bulletin #58-15 (dated June 23, 2015) and superseding Bulletin #115-11 states, in pertinent part, "[t]he use of portable radios other than the NYCT issued ICOM radio is strictly prohibited."

MTA NYC Transit Rapid Transit Operations Bulletin #04-16 (dated January 4, 2016) and superseding Bulletin #58-15, states, in pertinent part, "[t]he use/possession of portable radios and/or radio accessories other than the NYCT issued ICOM radio and accessories creates an unsafe work condition and is strictly prohibited." It further states that "Train Service Supervisors must visually inspect the portable radios of Train Operators and conductors and must ensure that all are compliant with this mandate." "Any employee found in possession of an unauthorized radio and/or radio accessories will be subject to disciplinary action, up to and including, dismissal." "Line Managers and Train Service Supervisors must monitor for strict compliance with this directive."

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<sup>4</sup> The Supervisor will test the radio and, if the radio remains inoperable, a replacement radio will be issued.

<sup>5</sup> While Bulletin #115-11 does not explicitly state that the use or possession of portable radios other than NYC Transit-issued ICOM radios is strictly prohibited, the intent to prohibit such conduct is clearly implied.

## FINDINGS

1. Lui possessed, sold and/or used approximately 50 unauthorized portable radios, in violation of Rapid Transit Operations Bulletins #58-15 and #115-11.
2. Perl possessed, sold and/or used an unauthorized portable radio, in violation of Rapid Transit Operations Bulletins #58-15 and #115-11.
3. Koch possessed and used an unauthorized portable radio, in violation of Rapid Transit Operations Bulletins #115-11.
4. Junious possessed and use an unauthorized portable radio, in violation of Rapid Transit Operations Bulletins #58-15 and #115-11.
5. Lui engaged in prohibited outside activities by selling unauthorized portable radios on NYC Transit property, during NYC Transit work hours to NYC Transit employees, in violation of NYC Transit Rules and Regulations Rules 11(h), 32.
6. Perl engaged in prohibited outside activities by selling unauthorized portable radios on NYC Transit property to NYC Transit employees, in violation of NYC Transit Rules and Regulations Rules 11(h), 32.
7. Lui and Perl affirmatively abandoned their responsibilities as Train Service Supervisors, in violation of NYC Transit Rules and Regulations Rule 102, by selling and/or providing unauthorized radios to subordinate employees.

## RECOMMENDATIONS

1. We recommend that NYC Transit impose discipline on Lui, up to and including termination.
2. We recommend that NYC Transit impose discipline on Perl, up to and including termination.
3. We recommend that NYC Transit impose discipline on Koch, commensurate with his misconduct, as it deems appropriate.
4. We recommend that NYC Transit impose discipline on Junious, commensurate with his misconduct, as it deems appropriate.

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As always, we appreciate your continued courtesy and cooperation. Should you have any questions, or need additional information, please contact me at (212) 878-0279 or Senior Investigative Attorney Sheryl Levine at (212) 878-0064.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Demetri M. Jones", with a long horizontal flourish extending to the right.

Demetri M. Jones  
Deputy Inspector General  
Legal & Investigations