

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

In the Matter of)	
)	
David P. Pace Jr.)	File Number: EB-06-LA-252
d/b/a Pacetronics / Pace Marketing)	
d/b/a/ 4:13 Electronics / Pacetronics)	NAL/Acct. No.: 200732900008
)	FRN: 0016467359
Nacogdoches, Texas)	

FORFEITURE ORDER

Adopted: February 26, 2008

Released: February 28, 2008

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000) to David P. Pace Jr. d/b/a/ Pacetronics / Pace Marketing and 4:13 Electronics / Pacetronics (“Pace”), in Nacogdoches, Texas, for willfully and repeatedly violating Section 302(b) of the Communications Act of 1934, as amended (“Act”),¹ and Section 2.803(a)(1) of the Commission’s Rules (“Rules”).² On May 23, 2007, the Enforcement Bureau’s Los Angeles Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Pace after determining that Pace offered for sale a non-certified Citizens Band (“CB”) transceiver. In this *Order*, we consider Pace’s arguments that he did not willfully violate the Act or the Rules; that he was offering the device in question for sale as an amateur transceiver; that there are no court cases which prohibit him from marketing this device; and that he is unable to pay the proposed forfeiture.

II. BACKGROUND

2. In September and December of 2006, and in January of 2007, an investigation by the Enforcement Bureau’s Los Angeles Office revealed that Pace was operating an Internet-based store, via an Internet website www.pacetronics.com, which marketed both uncertified CB transceivers, specifically Galaxy Model DX 99V, and uncertified radio frequency power amplifiers.

3. On February 14, 2007, the Los Angeles Office issued a Citation³ to Pace for violation of Section 302(b) of the Act and Sections 2.803(a)(1) and 2.815(c) of the Rules for selling non-certified CB transceivers.⁴ The Citation warned Pace that future violations may subject Pace to civil monetary forfeitures not to exceed \$11,000 for each violation or each day of a continuing violation,⁵ seizure of

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. § 2.803(a)(1).

³ Citation to David Pace, Jr., d/b/a 4:13 Electronics, released February 14, 2007 (“Citation”).

⁴ 47 C.F.R. §§ 2.803(a)(1), 2.815(c). Section 2.815(c) of the Rules provides that “[n]o person shall manufacture, sell or lease, offer for sale or lease (including advertising for sale or lease) or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any external radio frequency power amplifier or amplifier kit capable of operation on any frequency below 144 MHz unless the device has received a grant of type acceptance . . .” According to his response to the Citation, Pace no longer markets uncertified radio frequency power amplifiers.

⁵ See 47 C.F.R. § 1.80(b)(3).

equipment through *in rem* forfeiture action, and criminal sanctions including fines and imprisonment.⁶

4. On March 6, 2007, Pace replied to the Citation stating that the radios he markets are Amateur radios that operate solely on amateur frequencies and that he does not offer any type of modification or tuning that would make these radios capable of transmitting on the CB band. Pace also stated that “[v]irtually any Amateur radio that operates on the 10-meter band can be modified to operate on the CB band” and that he was aware of an interview and an email message from Commission staff supporting his views. Pace concluded that he expected the Los Angeles Office to withdraw the Citation within 30 days of the date of his response.

5. On April 18, 2007, a Los Angeles agent visited Pace’s Internet-based store at Internet website www.pacetrronics.com and found that Pace continued to market uncertified CB transceivers, specifically, Galaxy Model DX99V.

6. On May 23, 2007, the Los Angeles Office issued a *NAL* in the amount of \$7,000 to Pace.⁷ In the *NAL*, the Los Angeles Office found that Pace apparently willfully and repeatedly violated Section 302(b) of the Act,⁸ and Section 2.803(a)(1) of the Rules⁹ by offering for sale a non-certified CB transceiver. Pace filed a response on June 13, 2007 (“*Response*”). In his *Response*, Pace argues that he did not willfully violate the Act or the Rules, that he was offering the Galaxy Model DX99V for sale as an amateur transceiver; that there are no court cases which prohibit him from marketing these devices; and that he is unable to pay the proposed forfeiture.

III. DISCUSSION

7. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,¹⁰ Section 1.80 of the Rules,¹¹ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.¹² In examining the *Response*, Section 503(b) of the Act requires that the Commission take into account 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.¹³

8. Section 302(b) of the Act provides that “[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.”¹⁴ Section 2.803(a)(1) of the Rules

⁶ See 47 C.F.R. § 501, 503(b), 510. Previously, on July 7, 2003, the Enforcement Bureau’s Dallas Office issued a Citation to Pace d/b/a Pacetrronics for marketing uncertified CB transceivers in violation of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules. In his response to that Citation, Pace also reported that he had terminated his business and would no longer be selling radio equipment of any kind.

⁷ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732900008 (Enf. Bur., Western Region, Los Angeles Office, released May 23, 2007).

⁸ 47 U.S.C. § 302a(b).

⁹ 47 C.F.R. § 2.803(a)(1).

¹⁰ 47 U.S.C. § 503(b).

¹¹ 47 C.F.R. § 1.80.

¹² 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

¹³ 47 U.S.C. § 503(b)(2)(E).

¹⁴ 47 U.S.C. § 302a(b).

provides that “[e]xcept as provided elsewhere in this section, no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device unless in the case of a device subject to certification such device has been authorized by the Commission”¹⁵

9. CB radio transceivers are subject to the equipment certification process and must be certified and properly labeled prior to being marketed or sold in the United States.¹⁶ Unlike CB radio transceivers, radio transmitting equipment that transmits solely on Amateur Radio Service (“ARS”) frequencies is not subject to equipment authorization requirements prior to manufacture or marketing. However, some radio transmitters that transmit in a portion of the 10-meter band of the ARS (28.000 to 29.700 MHz) are equipped with rotary, toggle, or pushbutton switches mounted externally on the unit, which allow operation in the CB bands after completion of minor and trivial internal modifications to the equipment. To address these radios, the Commission adopted changes to the CB type acceptance requirements by defining a “CB Transmitter” as “a transmitter that operates or is intended to operate at a station authorized in the CB.”¹⁷ Section 95.655(a) of the Rules also states that no transmitter will be certificated for use in the CB service if it is equipped with a frequency capability not listed in Section 95.625 of the Rules (CB transmitter channel frequencies).¹⁸ Also, the Commission’s Office of General Counsel (“OGC”) released a letter on the importation and marketing of ARS transmitters, which clarified that transmitters that “have a built-in capacity to operate on CB frequencies and can easily be altered to activate that capacity, such as by moving or removing a jumper plug or cutting a single wire” fall within the definition of “CB transmitter” under Section 95.603(c) of the Rules and therefore require certification prior to marketing or importation.¹⁹ Additionally, the Commission’s Office of Engineering and Technology (“OET”) evaluated the Galaxy models at issue here and determined that these devices could easily be altered for use as CB transceivers.²⁰

10. Pace argues that he did not willfully violate the Act or the Rules because the Galaxy transceiver that he offered for sale was offered as an ARS transmitter and not as a CB transceiver. As defined in the Act, “[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 or any rule or regulation of the Commission authorized by this Act. . . .”²¹ The Commission’s interpretation of “willful” does not require the intent to engage in a violation.²² On February 14, 2007, Pace was issued a Citation which notified him that the offering for sale of the Galaxy Model DX99V transceiver was a violation of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules. After this notice, Pace continued to offer the Galaxy Model DX99V for sale, consciously and deliberately, despite the Citation. Consequently, we find that Pace’s actions were willful. Pace’s

¹⁵ 47 C.F.R. § 2.803(a)(1).

¹⁶ See 47 C.F.R. §§ 2.907, 2.927(a).

¹⁷ 47 C.F.R. § 95.603(c). See *Pilot Travel Centers*, 19 FCC Rcd 23113, 23114 (2004).

¹⁸ 47 C.F.R. § 95.655(a).

¹⁹ Letter from Christopher Wright, General Counsel, FCC to John Wood, Chief Intellectual Property Rights, US Customs Service, 14 FCC Rcd 7797 (OGC 1999) (“OGC Letter”). See also, *Ramko Distributors, Inc.*, 22 FCC Rcd 7161 (2007).

²⁰ *Pilot Travel Centers*, 19 FCC Rcd at 23119.

²¹ See Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act. *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

²² *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 at para. 5 (1991).

arguments that he offered the transceiver for sale as an ARS transceiver, and not as a CB radio, and that the transceiver was not modified to operate outside the ten meter band, are unavailing. As the Los Angeles Office stated in the *NAL*,²³ and as we repeat above, the Commission's OET, evaluated the Galaxy model at issue here and determined that this device could easily be altered for use as a CB transceiver. This evaluation was accepted by the Commission,²⁴ consequently, the Galaxy Model DX99V may not be marketed for sale until it has been certificated by the Commission. Because this model has not been certificated by the Commission, the offering for sale of the device by Pace was a violation of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules.

11. Pace also argues that while the Commission's OET has evaluated the Galaxy Model DX 99V and found them illegal to sell, he knows of no "court case, ruling, or judgment that proves that "Galaxy" radios are illegal, or are illegal to market, advertise, or sell." In Section 302 of the Act, Congress determined that "[n]o person shall manufacture, import, sell offer for sale, or ship devices . . . which fail to comply with regulations promulgated pursuant to this section"²⁵ and gave the Commission the authority to promulgate regulations to govern the interference potential of devices which emit radio frequency energy.²⁶ The OET evaluation of the Galaxy DX 99V transceiver was performed in accordance with those rules, as detailed above, was adopted by the Commission in 2004,²⁷ and has been the basis of forfeitures assessed by the Enforcement Bureau.²⁸ To date, no court has overturned any of the findings or forfeitures based on the OET evaluation of Galaxy Model DX99V.²⁹ Therefore, we reject Pace's argument.

12. Pace also argues that he has found statements from two Commission employees which indicate that the Galaxy Model DX99V transceivers were legal to sell.³⁰ The Commission has stated in the past that "[i]t is the obligation of interested parties to ascertain facts from Official Commission records and files and not rely on statements or informal opinions by the staff."³¹ Additionally, "[w]hen the staff advice is contrary to the Commission's rules, the Commission may still enforce its rules despite any reliance by the public."³² Therefore, we find no merit to this argument, especially given the fact that Pace was issued an official Citation by the Los Angeles Office placing him on the notice concerning the

²³ *NAL* at para 8.

²⁴ *Pilot Travel Centers*, 19 FCC Rcd at 23119.

²⁵ 47 U.S.C. § 302a(b).

²⁶ 47 U.S.C. § 302a(a), 47 U.S.C. § 303(e).

²⁷ See *Pilot Travel Centers*, 19 FCC Rcd at 23114 (2004).

²⁸ See, e.g., *Charles E. Vance d/b/a CB Candy Electronics*, 22 FCC Rcd 5031 (EB Western Region 2007); *Loves Travel Stops and Country Stores, Inc.*, 21 FCC Rcd 10798 (EB South Central Region 2006); *TravelCenters of America*, 21 FCC Rcd 6978 (EB Western Region 2006).

²⁹ See, e.g., *United States of America v. TravelCenters of America*, No. CV. 06-1850-AS (D. Or. October 10, 2007).

³⁰ Pace also asserts that he has found cases to prove that it is legal to sell the Galaxy Model DX99V, however, he does not cite to any reported cases or opinions.

³¹ *Texas Media Group, Inc.* 5 FCC Rcd 2851, 2852 (1990). See also *Ramko Distributors, Inc.*, 22 FCC Rcd 7161 (2007) (Regulatees are responsible for compliance with the Commission's rules and they should not rely on informal opinions from Commission staff).

³² *Hinton Telephone Company*, 10 FCC Rcd 11625, 11637 (1995). See also, *Malkan FM Associates v. FCC*, 935 F.2d 1313 (D.C. Cir 1991); *Schweiker v. Hansen*, 450 U.S. 785, 790 (1981) (petitioner's reliance on erroneous staff advice does not estop agency from requiring compliance with valid regulation).

prohibition against offering for sale the Galaxy Model DX99V.

13. Pace also states that he has stopped offering the Galaxy Model DX99V for sale, pending the outcome of this case. We find no reason to reduce the forfeiture amount based on this action. The Commission has consistently held that an entity or individual is expected to correct errors when they are brought to the entity or individual's attention and that such correction is not grounds for a downward adjustment in the forfeiture.³³ Finally, Pace claims that he cannot pay the proposed forfeiture amount, and submits one year of tax forms to justify his claim. We note that in the *NAL*, the Los Angeles Office instructed Pace, if he sought cancellation or reduction of the forfeiture, to supply:

(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.³⁴

Pace submitted only one year of documentation, therefore, he has not provided us with a sufficient basis to support cancellation or reduction of the forfeiture based on his inability to pay.³⁵

14. We have examined the *Response* to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Pace willfully and repeatedly violated Section 302(b) of the Act, and Section 2.803(a)(1) of the Rules. Considering the entire record and the factors listed above, we find that neither reduction nor cancellation of the proposed \$7,000 forfeiture is warranted.

IV. ORDERING CLAUSES

15. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, David P. Pace Jr. d/b/a/ Pacetronics / Pace Marketing and 4:13 Electronics / Pacetronics **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$7,000 for willfully and repeatedly violating Section 302(b) of the Act, and Section 2.803(a)(1) of the Rules.³⁶

16. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the 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.³⁷ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account

³³ *AT&T Wireless Services, Inc.* 17 FCC Rcd 21866, 21871-76 (2002).

³⁴ *NAL* at para 16.

³⁵ *See Webnet Communications, Inc.*, 18 FCC Rcd 6870, 6878 ¶ 16 (2003).

³⁶ 47 U.S.C. §§ 302a(b), 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 2.803(a)(1).

³⁷ 47 U.S.C. § 504(a).

number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

17. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to David P. Pace Jr., d/b/a/ Pacetronics / Pace Marketing and 4:13 Electronics / Pacetronics at its address of record, and its counsel of record, Michael C. Olson, Esquire.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau