

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

In the Matter of )

Carlsbad Radio, Inc. )

Licensee of Station WGW926 )  
Carlsbad, New Mexico )

File Number EB-07-DV-110

NAL/Acct. No. 200732800010  
FRN 0001612712

**FORFEITURE ORDER**

**Adopted: March 19, 2008**

**Released: March 21, 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 three thousand, two hundred dollars (\$3,200) to Carlsbad Radio, Inc. ("Carlsbad Radio"), licensee of station WGW926 in Carlsbad, New Mexico, for willful and repeated violation of Sections 1.903(a), 1.947(a), and 74.532(e) of the Commission's Rules ("Rules").<sup>1</sup> On September 25, 2007, the Enforcement Bureau’s Denver Office issued a Notice of Apparent Liability for Forfeiture (“*NAL*”) in the amount of \$4,000 to Carlsbad Radio for failing to operate station WGW926, an aural studio-transmitter-link (“*STL*”), from its licensed location. In this *Order*, we consider Carlsbad Radio’s arguments that it took immediate steps to rectify the situation as soon as it was aware of the violation, and that it has a history of compliance with the Commission’s Rules.

**II. BACKGROUND**

2. On February 7, 2007, an agent from the Enforcement Bureau's Denver Office inspected STL transmitters operating from the Carlsbad Radio studio at 1609 Radio Boulevard in Carlsbad, New Mexico ("Radio Boulevard Studio"). The coordinates of the Radio Boulevard studios are approximately 32° 23' 43" north latitude, 104° 14' 48" west longitude. At the time of the inspection, station WGW926 was operating from these coordinates. According to the WGW926 station authorization, at the time of the inspection, its licensed coordinates were 32° 25' 41.4" north latitude, 104° 13' 26.8" west longitude with a physical street address of 714 North Canyon, in Carlsbad, New Mexico.

3. During the Radio Boulevard Studio inspection, the agent informed the Carlsbad Radio stations' engineer of the violations found with the WGW926 station license. The Carlsbad Radio engineer stated that the WGW926 STL had been relocated from the 714 North Canyon studio location to the Radio Boulevard Studio more than a year prior to the inspection. When the inspections were completed, the agent reviewed the violations with Carlsbad Radio representatives. The station engineer acknowledged the licensing errors and stated to the agent that, after being informed of the STL licensing violations that afternoon, Carlsbad Radio would begin the process to correct the authorization accordingly.

<sup>1</sup> 47 C.F.R. §§ 1.903(a), 1.947(a), and 74.532(e).

4. On February 8, 2007, the agent returned to the Radio Boulevard Studio and observed station WGW926 continuing to transmit on a center frequency of 951.5000 MHz.

5. On September 10, 2007, a review of the Commission's databases reflected neither a change in the coordinates nor a change in the fixed location address for station WGW926. Additionally, there were no applications pending in the system for modifications to correct the licensing errors the agent communicated to Carlsbad Radio's chief engineer.

6. On September 25, 2007, the Denver Office issued a *NAL* in the amount of \$4,000 to Carlsbad Radio.<sup>2</sup> In the *NAL*, the Denver Office found that Carlsbad Radio apparently willfully and repeatedly violated Sections 1.903(a), 1.947(a), and 74.532(e) of the Rules by failing to operate station WGW926 from its licensed location. Carlsbad Radio filed a response ("*Response*") to the *NAL* on October 25, 2007, and supplemented its response on February 8, 2008, and March 12, 2008. In its *Response*, Carlsbad Radio argues that it made efforts immediately after the Denver Office's inspection to amend the WGW926 license, and that it has a history of compliance with the Commission's Rules.

### III. DISCUSSION

7. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>3</sup> Section 1.80 of the Rules,<sup>4</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.<sup>5</sup> 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.<sup>6</sup>

8. 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 and with a valid authorization granted by the Commission.<sup>7</sup> Section 1.947(a) of the Rules requires that all major modifications as defined in Section 1.929 of the Rules require prior Commission approval.<sup>8</sup> Section 1.929(d)(1)(i) of the Rules defines one of the major actions as "any change in transmit antenna location by more than 5 seconds in latitude or longitude for fixed point-to-point facilities."<sup>9</sup> Section 74.532(e) of the Rules states that each aural broadcast auxiliary station will be licensed at a specified transmitter location to communicate with a specified receiving location, and the direction of the main radiation lobe of the transmitting antenna will be a term of the station authorization.<sup>10</sup> At the time of the inspection on February

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<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732800010 (Enf. Bur., Western Region, Denver Office, released September 25, 2007).

<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> 47 C.F.R. § 1.80.

<sup>5</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>6</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>7</sup> 47 C.F.R. § 1.903(a).

<sup>8</sup> 47 C.F.R. § 1.947(a).

<sup>9</sup> 47 C.F.R. § 1.929(d)(1)(i).

<sup>10</sup> 47 C.F.R. § 74.532(e).

7, 2007, Carlsbad Radio was found operating radio station WGW926 from a location inconsistent with the station's authorized coordinates and street address. The distance separating the point of operation from that of the license was greater than 2.5 miles (specifically, approximately 118 seconds of latitude and approximately 81 seconds of longitude).

9. In its *Response*, Carlsbad Radio does not dispute the facts recited in the *NAL*. Instead it states that it failed to amend its license when the station was relocated, that the failure was an oversight, and that it filed applications to amend the license on February 16, 2007. It states that it was unaware that its efforts to amend the license after the Denver Office inspection in February were unsuccessful until it received the *NAL* in September. While we appreciate Carlsbad Radio's efforts, the Commission has consistently held that a licensee is expected to correct errors when they are brought to the licensee's attention and that such correction is not grounds for a downward adjustment in the forfeiture.<sup>11</sup> Consequently, we find that Carlsbad Radio's efforts to ameliorate its violation, after the violation was brought to Carlsbad Radio's attention during the February 7, 2007, by the Denver agents, are not a basis to reduce the forfeiture

10. Carlsbad Radio also contends that it has a history of overall compliance with the Commission's Rules. We have reviewed our records and we concur. Consequently, we reduce Carlsbad Radio's forfeiture amount to \$3,200.

11. 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 Carlsbad Radio willfully and repeatedly violated Sections 1.903(a), 1.947(a), and 74.532(e) of the Rules. Considering the entire record and the factors listed above, we find that reduction of the proposed forfeiture to \$3,200 is warranted.

12. We also note that, as of the date of this *Order*, the Commission databases continue to reflect neither a change in the coordinates nor a change in the fixed location address for station WGW926, although Carlsbad Radio has submitted information that it has engaged in frequency coordination and anticipates filing a new application shortly.<sup>12</sup> Consequently, we require Carlsbad Radio to report to the Denver Office, Western Region, no more than thirty (30) days following the release of this *Order* how it achieved compliance with Section 1.903(a) of the Rules for station WGW926. Carlsbad Radio's report must be submitted in the form of an affidavit signed by an officer or director of Carlsbad Radio.

#### IV. ORDERING CLAUSES

13. **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, Carlsbad Radio, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$3,200 for willfully and repeatedly violating Sections 1.903(a), 1.947(a), and 74.532(e) of the Rules.<sup>13</sup>

14. **IT IS FURTHER ORDERED**, pursuant to Section 403 of the Act, that Carlsbad Radio, Inc., must submit the report described in paragraph 12, above, within no more than thirty (30) days

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<sup>11</sup> See, e.g., *AT&T Wireless Services, Inc.* 17 FCC Rcd 21866, 21871-76 (2002).

<sup>12</sup> Carlsbad Radio previously submitted an application to modify the WGW926 license on October 12, 2007. See File No. 0003197438. That application, however, was dismissed on February 2, 2008.

<sup>13</sup> 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 1.903(a), 1.947(a), 74.532(e).

following the release of this *Order*, to the Federal Communications Commission, Enforcement Bureau, Western Region, Denver Office, 215 South Wadsworth Boulevard, Suite 303, Lakewood, Colorado, 80226, and must include the NAL/Acct. No. referenced in the caption.<sup>14</sup>

15. 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.<sup>15</sup> 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 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](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures.

16. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Carlsbad Radio, Inc., at its address of record.

**FEDERAL COMMUNICATIONS COMMISSION**

Rebecca L. Dorch  
Regional Director, Western Region  
Enforcement Bureau

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<sup>14</sup> 47 U.S.C. § 403.

<sup>15</sup> 47 U.S.C. § 504(a).