

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

In the Matter of)	
)	File No. EB-09-SE-038
University of San Diego)	NAL/Acct. No. 201032100019
San Diego, California)	FRN # 0001526730

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 19, 2010

Released: February 19, 2010

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find the University of San Diego (“the University”), former licensee of Private Land Mobile Radio (“PLMRS”) station WPQD526, in San Diego, California, apparently liable for a forfeiture in the amount of six thousand four hundred dollars (\$6,400) for apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”)¹ and Section 1.903(a) of the Commission’s Rules (“Rules”)² and for apparent willful violation of Section 1.949(a) of the Rules.³ The noted apparent violations involve the University’s operation of its PLMRS station without Commission authority and its failure to timely file a renewal application for the station.

II. BACKGROUND

2. On June 1, 2000, the University was granted a license to operate station WPQD526 until the license expiration date of June 1, 2005. On August 6, 2005, the Commission’s Wireless Telecommunications Bureau (“WTB”) cancelled the license for WPQD526 since there was no record that the University had filed a renewal application for the station. On February 22, 2009, the University filed with WTB a request for Special Temporary Authority (“STA”), stating that it had just noticed that its license for WPQD526 had expired, and the STA was necessary for continued operation of its radio communications pending action on its application for a new license to reinstate operation on the expired frequency. On February 25, 2009, WTB granted the STA under call sign WQJZ620.⁴

3. Because it appeared that the University may have operated WPQD526 after the expiration of its license, WTB referred the matter to the Enforcement Bureau for investigation and possible enforcement action. On June 3, 2009, the Enforcement Bureau’s Spectrum Enforcement Division issued a letter of inquiry (“LOI”) to the University requesting information about whether it

¹ 47 U.S.C. § 301.

² 47 C.F.R. § 1.903(a).

³ 47 C.F.R. § 1.949(a).

⁴ See File No. 0003746175 granting the University a STA on February 25, 2009, under the call sign WQJZ620. The grant of the STA does not preclude or prejudice any enforcement action related to unauthorized operations.

operated without authority and failed to file a renewal.⁵

4. In its June 30, 2009 response to the LOI,⁶ the University stated that it first became aware of the expiration of its license to operate station WPQD526 on or about January 20, 2009.⁷ Upon discovering the expiration of its license, the University stated that it “promptly took steps to rectify the situation” by filing for a request for special temporary authority and a new license on February 22, 2009 and March 9, 2009 respectively.⁸ The University stated that after June 1, 2005, it continued to use station WPQD526 for internal staff, public safety and emergency communications with the belief that the license was current.⁹ The University also explained that it did not receive any complaints regarding its use during that time period nor was it made aware that the license had expired.¹⁰ Further, the University stated that it understands the importance of complying with the Commission’s rules and has revised its process for overseeing and coordinating the renewal of FCC licenses.¹¹ The University has asserted that henceforth, the University’s Office of General Counsel will now coordinate the appropriate maintenance and timely renewal of all FCC licenses maintained by the institution.¹²

III. DISCUSSION

5. Section 301 of the Act and Section 1.903(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by radio except under, and in accordance with, a Commission granted authorization.¹³ Additionally, Section 1.949(a) of the Rules requires that licensees file renewal applications for wireless radio stations, “no later than the expiration date of the authorization for which renewal is sought, and no sooner than 90 days prior to expiration.”¹⁴ Absent a timely filed renewal application, a wireless radio station license automatically terminates.¹⁵

6. As a Commission licensee, the University was required to maintain its authorization in order to operate station WPQD526. The University admitted that it operated its PLMRS station without Commission authority from the initial license expiration date.¹⁶ By operating station WPQD526 after the station’s license expiration date of June 1, 2005, the University apparently violated Section 301 of the Act and Section 1.903(a) of the Rules. The University also acted in apparent violation of Section 1.949(a) of the Rules by failing to timely file a renewal application for station WPQD526.

⁵ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Nancy Weber, University of San Diego (June 3, 2009).

⁶ See Letter from Kelly Capen Douglas, General Counsel, University of San Diego, to Celia Lewis, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (June 30, 2009) (“Response”).

⁷ Response at 1.

⁸ *Id.* See File No. 0003764832 granting the University a new license on March 12, 2009, under the call sign WQKA877. The license application was filed on March 9, 2009.

⁹ Response at 1.

¹⁰ Response at 2.

¹¹ *Id.*

¹² *Id.*

¹³ 47 U.S.C. § 301; 47 C.F.R. § 1.903(a).

¹⁴ 47 C.F.R. § 1.949(a).

¹⁵ 47 C.F.R. § 1.955(a)(1).

¹⁶ Response at 2.

7. Section 503(b) of the Act¹⁷ and Section 1.80(a) of the Rules¹⁸ provide that any person who willfully or repeatedly fails to comply with the provisions of the Act or the Rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Act, the term “willful” means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Commission’s Rules, and “repeated” means more than once.¹⁹ Based on the record before us, it appears that the University’s violation of Section 301 of the Act and Section 1.903(a) of the Rules is willful and repeated, and its violation of Section 1.949(a) of the Rules is willful.

8. In determining the appropriate forfeiture amount, Section 503(b)(2)(E) of the Act directs us to consider factors, such as “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 such other matters as justice may require.”²⁰

9. Section 503(b)(6) of the Act²¹ bars the Commission from proposing a forfeiture for violations that occurred more than a year prior to the issuance of an *NAL*. Section 503(b)(6) does not, however, bar the Commission from assessing whether the University’s conduct prior to that time period apparently violated the provisions of the Act and Rules and from considering such conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period.²² Thus, while we may consider the fact that the University’s conduct has continued over a period that began in 2005, the forfeiture amount we propose herein relates only to the University’s apparent violations that have occurred within the past year.

10. Section 1.80(b) of the Rules sets a base forfeiture amount of \$10,000 for operation of a station without Commission authority and a base forfeiture amount of \$3,000 for failure to file required forms or information.²³ The Commission has held that a licensee’s continued operations without authorization and its failure to timely file a renewal application constitute separate violations of the Act and the Rules and warrant the assessment of separate forfeitures.²⁴ Accordingly, we herein propose

¹⁷ 47 U.S.C. § 503(b).

¹⁸ 47 C.F.R. § 1.80(a).

¹⁹ See 47 U.S.C. § 312(f)(1) & (2). See also *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (the definitions of willful and repeated contained in the Act apply to violations for which forfeitures are assessed under Section 503(b) of the Act).

²⁰ 47 U.S.C. § 503(b)(2)(E). See also 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures; *Forfeiture Policy Statement*, Report and Order, 12 FCC Rcd 17087, 17110 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

²¹ 47 U.S.C. § 503(b)(6).

²² See 47 U.S.C. § 503(b)(2)(D), 47 C.F.R. § 1.80(b)(4); see also *Behringer USA, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 1820, 1825 (2006), *forfeiture ordered*, 22 FCC Rcd. 1051 (2007) (forfeiture paid); *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-71 (2000); *Cate Communications Corp.*, Memorandum Opinion and Order, 60 RR 2d 1386, 1388 (1986); *Eastern Broadcasting Corp.*, Memorandum Opinion and Order, 10 FCC 2d 37 (1967), *recon. den.*, 11 FCC 2d 193 (1967); *Bureau D’Electronique Appliquee, Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 3445, 3447-48 (Enf. Bur., Spectrum Enf. Div. 2005), *forfeiture ordered*, 20 FCC Rcd 17893 (Enf. Bur., Spectrum Enf. Div. 2005) (forfeiture paid).

²³ 47 C.F.R. § 1.80(b).

²⁴ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 7433, 7438 (2004) (“*Discussion Radio*”).

separate forfeiture amounts for the University's separate violations.

11. We propose a forfeiture in the amount of \$5,000 for the University's continued operation of station WPQD526 after the expiration of its license on June 1, 2005. In proposing a \$5,000 forfeiture for the station's unauthorized operations, we recognize that the Commission considers a licensee who operates a station with an expired license in better stead than a pirate broadcaster who lacks prior authority, and thus downwardly adjust the \$10,000 base forfeiture amount accordingly.²⁵ Consistent with precedent,²⁶ the proposed \$5,000 forfeiture takes into account that the University's unauthorized operations occurred for more than three years. In addition, we propose the full base forfeiture amount of \$3,000 for the University's failure to file the renewal application for its PLMRS station within the time period specified in Section 1.949(a) of the Rules.²⁷ Thus, we propose an aggregate forfeiture of \$8,000 (\$5,000 for unauthorized operation of a PLMRS station and \$3,000 for failure to timely file a renewal application).

12. We decline the University's request that the Commission waive any fees or penalties associated with the expiration of license WPQD526.²⁸ As a Commission licensee, the University is charged with knowledge of the full range of its obligations, including its duty to comply with the terms of its authorization, the Act and Rules by timely seeking renewal of its license to maintain operating authority.²⁹ We find, however, that a downward adjustment from \$8,000 to \$6,400 is warranted since the University made voluntary disclosures to Commission staff and undertook corrective measures after learning of its violations, but *prior* to any Commission inquiry or initiation of enforcement action.³⁰

²⁵ See *Discussion Radio*, 19 FCC Rcd at 7438.

²⁶ See *Nevada Sun Peak LP*, Notice of Apparent Liability for Forfeiture, DA 09-2644 (Enf. Bur., Spectrum Enf. Div. released January 4, 2010) ("*Nevada Sun Peak*") (proposing \$5,000 forfeiture for unauthorized operation of PLMRS station for over three years); *Richmond Association d/b/a Hilltop Shopping Center*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 51, 53 (Enf. Bur., Spectrum Enf. Div. 2008) (forfeiture paid) (proposing \$5,000 forfeiture for unauthorized operation of an Industrial/Business Pool Radio Service station for approximately two and one-half years); *Yellow Cab Leasing Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 12719, 12722 (Enf. Bur., Spectrum Enf. Div. 2007) (proposing \$5,000 forfeiture for unauthorized operation of a PLMRS station for over three years); *Five Star Parking d/b/a Five Star Taxi Dispatch*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 18857, 18860 (Enf. Bur., Spectrum Enf. Div. 2007) (forfeiture paid) (proposing \$5,000 forfeiture for unauthorized operation of a PLMRS station for approximately two and one-half years).

²⁷ See e.g., *Nevada Sun Peak*, DA 09-2644 at ¶ 11; *Texas Soaring Association, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 7638, 7641 (Enf. Bur., Spectrum Enf. Div. 2009); *Discovery World Television, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 2883 (Enf. Bur., Spectrum Enf. Div. 2009); *Bloomsburg University of Pennsylvania*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 9357, 9359 (Media Bur., Audio Div. 2008); *Sunflower Communications, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7657, 7659 (Media Bur., Audio Div. 2008); *Santa Cruz Educational Broadcasting Foundation*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC 21033, 21035 (Media Bur., Audio Div. 2007) (all proposing the full base forfeiture amount of \$3,000 against broadcast station licensees for failure to file timely renewal applications).

²⁸ Response at 2.

²⁹ See *Discussion Radio*, 19 FCC Rcd at 7437; *Gilmore Broadcasting Corp.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 6284, 6286-87 (Enf. Bur., Spectrum Enf. Div. 2006); *Journal Broadcast Corporation*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18211, 18214 (Enf. Bur., Spectrum Enf. Div. 2005).

³⁰ See *Petracom of Texarkana, LLC*, Forfeiture Order, 19 FCC Rcd 8096, 8097-8098 (Enf. Bur. 2004). See also, *SES Americom, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 2694, 2697 (Enf. Bur., Spectrum Enforcement Div. 2009) (forfeiture paid); *Side By Side, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 898, 901 (Enf. Bur., Spectrum Enf. Div. 2008); *Lazer Broadcasting Corp.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 8710, 8712 (Enf. Bur., Spectrum Enf. Div. 2005) (forfeiture paid).

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act³¹ and Sections 0.111, 0.311 and 1.80 of the Rules,³² the University of San Diego **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of six thousand four hundred dollars (\$6,400) for the willful and repeated violation of Section 301 of the Act and Section 1.903(a) of the Rules and the willful violation of Section 1.949(a) of the Rules.

14. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,³³ within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, the University of San Diego **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

15. 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 with any questions regarding payment procedures. The University of San Diego will also send electronic notification on the date said payment is made to Celia.Lewis@fcc.gov and Ricardo.Durham@fcc.gov.

16. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80(f)(3) and 1.16 of the Rules. The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption. The statement should also be emailed to Celia Lewis at Celia.Lewis@fcc.gov and Ricardo Durham at Ricardo.Durham@fcc.gov.

17. 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; 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.

³¹ 47 U.S.C. § 503(b).

³² 47 C.F.R. §§ 0.111, 0.311 and 1.80.

³³ 47 C.F.R. § 1.80.

18. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail return receipt requested to Kelly Capen Douglas, General Counsel, University of San Diego, Hughes Administration Center, 212, 5998 Alcala Park, San Diego, CA 92110-2492.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau