

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

In the Matter of)	
)	
Pacific Spanish Network, Inc.)	File Number: EB-10-SD-0018
)	NAL/Acct. No.: 201132940003
Licensee of WQCV596)	FRN: 0012469557
Chula Vista, California)	

FORFEITURE ORDER

Adopted: March 15, 2012

Released: March 16, 2012

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of six thousand dollars (\$6,000) to Pacific Spanish Network, Inc. (Pacific Spanish), licensee of Fixed Microwave Service radio station, WQCV596, in Chula Vista, California, for willfully and repeatedly violating Section 1.903(a) of the Commission's rules (Rules),¹ which requires stations in the Wireless Radio Services to operate in accordance with the provisions of the rule that are applicable to their particular service and only with a valid authorization granted by the Commission. The noted violations involved Pacific Spanish's operation of Station WQCV596 on a frequency and antenna orientation not authorized by its license.

II. BACKGROUND

2. On February 28, 2010, the Enforcement Bureau's San Diego Office (San Diego Office) received information that an application submitted by Pacific Spanish for modification of its Fixed Microwave Service radio station license for WQCV596 had been dismissed by the FCC for failing to make payment on a delinquent debt. A search of the Commission's database revealed that Pacific Spanish filed an application on January 6, 2010 (January 2010 Application)² to: (1) change the operating frequency from 22473.5 MHz to 21241.5 MHz; (2) change the antenna azimuth from 116.2° to 161.5°; and (3) relocate the endpoint of the microwave path in Tijuana, Mexico.³

3. Agents from the San Diego Office, on March 1, 2010, inspected the Station WQCV596 control point, located at 296 H Street, Chula Vista, California and, using a spectrum analyzer, observed the operating parameters of Station WQCV596. The San Diego agents found that a signal on 21241.5

¹ 47 C.F.R. § 1.903(a).

² See File No. 0004084152, filed January 6, 2010.

³ The January 2010 Application was returned by the Commission's Wireless Telecommunications Bureau (WTB) on February 23, 2010. See *Notice of Dismissal* to Pacific Spanish Networks, Inc., from Federal Communications Commission, Wireless Telecommunications Bureau, dated February 23, 2010. In the dismissal letter, WTB cautioned Pacific Spanish that "[i]f you are currently operating under authority provided by the Commission's Rules based on your submission of the above referenced application, you must immediately cease operation until such time as you come into compliance with the Rules." *Id.*

MHz was being emitted from their microwave antenna, and its antenna was pointed at an azimuth approximately 160° atop the building roof, in the manner proposed in the January 2010 Application. A subsequent inspection on March 2, 2010, by the agents revealed the same findings.⁴

4. On April 9, 2010, a San Diego agent returned to the Station WQCV596 control point and once again found the microwave radio station still active on 21241.5 MHz and its antenna pointed at an azimuth approximately 160°. After the inspection of Station WQCV596, the agent contacted the Pacific Spanish engineer for information, and the engineer stated that a license to operate on frequency 21241.5 MHz had been issued and a copy would be e-mailed to the San Diego Office. Later that day, the San Diego Office received an e-mail message from the Pacific Spanish engineer with an attachment containing a copy of Pacific Spanish's license for Station WQCV596. This license, however, was a copy of the original authorization granted on June 6, 2005, to operate on frequency 22473.5 MHz. Pacific Spanish could not provide an FCC authorization indicating that it was authorized to operate Station WQCV596 on 21241.5 MHz at the time of the inspection.⁵

5. Accordingly, on February 25, 2011, the San Diego Office issued a Notice of Apparent Liability for Forfeiture (*NAL*) in the amount of \$6,000 to Pacific Spanish for operating a microwave radio station on a frequency and antenna orientation not authorized by its license.⁶ After requesting and receiving an extension of time, Pacific Spanish responded to the *NAL*.⁷ In its *Response*, Pacific Spanish does not dispute the facts presented in the *NAL*, but asks that we reduce the proposed forfeiture nonetheless based on its asserted history of providing "high quality" service within its service area; and it further states that if we do not do so, the proposed forfeiture amount would only serve to benefit Pacific Spanish's competitors.⁸

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),⁹ Section 1.80 of the Rules,¹⁰ and the Commission's *Forfeiture Policy Statement*.¹¹ In examining Pacific Spanish's 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,

⁴ On March 18, 2010, Pacific Spanish resubmitted its application to modify the Station WQCV596 license (March 2010 Application). As in the January 2010 Application, Pacific Spanish proposed to: (1) change the Station's operating frequency from 22473.5 MHz to 21241.5 MHz; (2) change the antenna azimuth from 116.2° to 161.5°; and (3) relocate the endpoint of the microwave path in Tijuana, Mexico. *See* File No. 0004177603, filed March 18, 2010.

⁵ On June 9, 2010, WTB granted the March 2010 Application, allowing the use of frequency 21241.5 MHz with a reorientation of the antenna to an azimuth of 161.5°.

⁶ *See Pacific Spanish Network, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 2170 (Enf. Bur. 2011) (*NAL*).

⁷ *See* Response of Pacific Spanish (filed Jan. 27, 2012) (*Response*) (on file in EB-10-SD-0018).

⁸ *See id.*

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 C.F.R. § 1.80.

¹¹ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

ability to pay, and other such matters as justice may require.¹² We considered Pacific Spanish's response to the *NAL* in light of these statutory factors and find that no reduction of the forfeiture is warranted.

7. Section 1.903(a) of the Rules states that “[s]tatements in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service as set forth in this title and with a valid authorization granted by the Commission”¹³ On March 1, March 2, and April 9, 2010, San Diego agents determined that Pacific Spanish was operating Station WQCV596 on frequency 21241.5 MHz, instead of its authorized frequency of 22473.5 MHz; and that the Station's antenna was pointed at an azimuth approximately 160°, instead of its authorized antenna azimuth of 116.2°. Pacific Spanish, however, was unable to produce an FCC license that authorized its operation on frequency 21241.5 MHz and antenna azimuth of 160°.

8. Although Pacific Spanish does not dispute the factual findings in the *NAL*, it asks for a reduction of the proposed \$6,000 forfeiture, “in light of [Pacific Spanish's] long history of high quality in broadcasting within its service area and its continuous striving to serve the needs of the communities whose signal it reaches.”¹⁴ We find no reason to reduce the proposed forfeiture amount based on this assertion. The Commission has consistently held that “[l]icensees are expected to comply with the Commission's Rules as well as to make continued efforts to serve the community to which they are licensed and will not be relieved of liability for violations of the Rules by the fact they have fulfilled their responsibility to serve their communities.”¹⁵ Additionally, “[a] licensee is not relieved of responsibility for complying with applicable statutes and rules by the fact that it has performed an outstanding public service to the community.”¹⁶ Therefore, we decline to mitigate the proposed forfeiture based on Pacific Spanish's asserted public service record.

9. Pacific Spanish also objects to the amount of the forfeiture, arguing that its competitors in the market would use the amount of the forfeiture “as an adverse competitive tool.”¹⁷ We find that the San Diego Office, in deciding the appropriate forfeiture in this case, properly took into account the full extent of the statutory factors discussed in paragraph 6, above, along with the *Forfeiture Policy Statement*, and that Pacific Spanish has presented no evidence, in support of its argument, that requires or persuades us to reduce the proposed forfeiture.

10. As a result of our review of Pacific Spanish's *Response*, pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*, we conclude that Pacific Spanish willfully and repeatedly violated Section 1.903(a) of the Rules. Considering the entire record and the factors listed above, we find that a forfeiture in the amount of \$6,000 is warranted.

IV. ORDERING CLAUSES

11. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the

¹² 47 U.S.C. § 503(b)(2)(E).

¹³ 47 C.F.R. § 1.903(a).

¹⁴ *Response* at 1.

¹⁵ *Radio Beaumont, Inc.*, Memorandum Opinion and Order, 50 FCC 2d 904 (1975) (holding that a licensee's public service to its community will not justify a reduction in the amount of a forfeiture for a licensee).

¹⁶ *Esther Blodgett*, Memorandum Opinion and Order, 18 FCC 2d 6 (1969) (finding that a licensee is expected to provide public service to its community).

¹⁷ *Response* at 1.

Commission's Rules, Pacific Spanish Network, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of six thousand dollars (\$6,000) for willfully and repeatedly violating Section 1.903(a) of the Commission's rules.¹⁸

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁹ 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 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. Pacific Spanish Network, Inc. shall also send electronic notification on the date said payment is made to WR-Response@fcc.gov

13. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by both First Class Mail and Certified Mail, Return Receipt Requested, to Pacific Spanish Network Inc., 296 H Street, Chula Vista, California, 91910, and its counsel, Lewis H. Goldman, P.C., 45 Dudley Court, Bethesda, Maryland 20814.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

¹⁸ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 1.903(a).

¹⁹ 47 U.S.C. § 504(a).