

Federal Communications Commission

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

In the Matter of
Pacific Spanish Network Inc.
Chula Vista, California
File Number: EB-05-SD-042
NAL/Acct. No: 200532940009
FRN: 0012-4695-57

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: September 28, 2005

By the District Director, San Diego Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Pacific Spanish Network Inc. ("Pacific Spanish"), an operator of a microwave radio station in Chula Vista, California, apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended ("Act"), by operating an unlicensed microwave radio station on microwave channel 22473.5 MHz. We conclude, pursuant to Section 503(b) of the Act, that Pacific Spanish is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On March 8, 2005, the Commission's San Diego Office began its investigation of allegations that Pacific Spanish Network Inc., at 296 H Street, Chula Vista, California, was operating an unauthorized microwave radio station. An agent from the San Diego office monitored and measured the transmissions of a microwave radio station operated at Pacific Spanish's offices in Chula Vista. The frequency measurement showed that this microwave radio station was operating on microwave channel 22473.5 MHz.

3. A review of the Commission's database revealed that Pacific Spanish has no authorization to operate a point-to-point microwave radio station at 296 H Street. Pacific Spanish did have a pending license application, filed January 13, 2005, for operation on 22473.5 MHz for this transmitter site ("January 2005 Application"). However, this application was dismissed on March 1, 2005, for failure to make a payment on a delinquent debt. In the dismissal letter, Pacific Spanish was

147 U.S.C. § 301.
247 C.F.R. § 101.147(s).
347 U.S.C. § 503(b).
4See File No. 0002006216.

cautioned 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.”

4. On March 9, 2005, another San Diego agent returned to the Pacific Spanish offices and measured the microwave radio station operating on microwave channel 22473.5 MHz. The agent conducted an inspection of the radio station with the Pacific Spanish staff. The agent requested a copy of Pacific Spanish’s station authorization for its microwave radio station, but none could be found, only the dismissed January 2005 Application. Subsequently, agents determined that on March 10, 2005, Pacific Spanish filed a license application (“March 2005 Application”) for operation of a microwave radio station at 296 H Street, Chula Vista, California, on 22473.5 MHz.⁵

5. On March 11, 2005, the San Diego Office sent a Letter of Inquiry (“LOI”) to Pacific Spanish concerning its operation on an unauthorized frequency of 22473.5 MHz, in violation of Section 301 of the Act. On March 18, 2005, Pacific Spanish filed an application for special temporary authorization (“STA Application”) for operation of a microwave radio station at 296 H Street, Chula Vista, California, for the frequency of 22473.5 MHz.⁶ On March 23, 2005, San Diego agents returned to the Pacific Spanish site and found the microwave radio station operational on microwave channel 22473.5 MHz.

6. The San Diego Office received a reply to the LOI on March 25, 2005. In its reply, Pacific Spanish indicates this microwave station has been operational since February 2005. It also indicated that because its STA Application will not be approved by the Commission, it has stopped operating the microwave station as of March 24, 2005.

7. On June 6, 2005, the March 2005 Application was granted and Pacific Spanish was issued a station authorization, call sign WQVC596.

III. DISCUSSION

8. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.⁷ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁸

⁵See File No. 0002073942.

⁶See File No. 0002091865.

⁷Section 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, provides that “[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....” See Southern California Broadcasting Co., 6 FCC Rcd 4387 (1991).

⁸Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

9. Section 301 of the Act requires that no person shall use or operate any apparatus for the transmission of energy of communications or signals by radio within the United States except under and in accordance with the Act and with a license. On March 8, 2005, March 9, 2005, and March 23, 2005, measurements made by San Diego agents revealed that Pacific Spanish was operating a microwave radio station on microwave channel 22473.5 MHz. A review of Commission records indicated that Pacific Spanish had no authorization to operate on 22473.5 MHz until June 6, 2005.⁹

10. Pacific Spanish was aware licensing for its microwave station was required, as evidenced by its three applications and as evidenced by the dismissal letter it received from the Commission in March 2005. Therefore, Pacific Spanish's violation was willful. The violation occurred on more than one day, therefore, it was repeated. Based on the evidence before us, we find that Pacific Spanish apparently willfully and repeatedly violated Section 301 of the Act by operating a microwave radio station without authorization.

11. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines ("Forfeiture Policy Statement")*, and Section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization for the service is \$10,000.¹⁰ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.¹¹ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors, we conclude that Pacific Spanish is apparently liable for a forfeiture in the amount of \$10,000.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Pacific Spanish Network Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violation of Section 301 of the Act.¹²

13. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules, within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture, Pacific Spanish Network Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. 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/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal

⁹Pursuant to Sections 101.31(b)(1) and 101.31 (b)(1)(v) of the Rules, 47 C.F.R. §§ 101.31(b)(1), 101.31(b)(1)(v), certain applicants for point-to-point microwave stations, not located within 56.3 kilometers of any international border, operating in certain frequency bands, are deemed to have conditional authority to operate their proposed stations during the pendency of their applications. The frequency proposed for use by Pacific Spanish in its applications is not contained in these frequency bands. Also, Pacific Spanish's proposed station is located approximately 10.6 km from the Mexican border.

¹⁰12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹¹47 U.S.C. § 503(b)(2)(D).

¹²47 U.S.C. §§ 301, 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80.

Federal Communications Commission

Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

15. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, San Diego Office, 4542 Ruffner Street, Suite 370, San Diego, California 92111, within thirty (30) days from the release date of this Notice of Apparent Liability for Forfeiture and must include the NAL/Acct. No. referenced in the caption.

16. 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 ("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.

17. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹³

18. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Pacific Spanish Network Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

William R. Zears, Jr.
District Director
San Diego Office
Western Region
Enforcement Bureau

¹³See 47 C.F.R. § 1.1914.