

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

In the Matter of
Public Safety Technologies, Inc.
Licensee of Station WQJM334
West Covina, California
File No.: EB-FIELDWR-15-00019998
NAL/Acct. No.: 201632900001
FRN: 0014831887

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 21, 2016

Released: September 22, 2016

By the Regional Director, Region Three, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of \$25,000 against Public Safety Technologies, Inc. (PST), licensee of private land mobile radio (PLMR) station WQJM334, West Covina, California (Station), for causing harmful interference to other licensed stations operating on a shared frequency in the Los Angeles area and for other violations of our requirements for PLMR stations. The Enforcement Bureau previously warned PST that its conduct could result in an enforcement action, yet, despite our warnings, PST continued to operate in a manner that causes both causes harmful interference to others and hinders the ability of the Commission and other licensees to identify the source of the interference. PST's disregard of the Commission's prior warnings, coupled with its interference to other licensees operating on shared spectrum, warrants a significant penalty.

II. BACKGROUND

2. PST is the licensee of several PLMR stations in the Los Angeles area.1 Frequencies assigned to PLMR stations are available on a shared basis, unless otherwise specified.2 The Station is authorized to operate on five frequencies from a fixed location on San Jose Hill in West Covina, California, including 451.350 MHz and 451.600 MHz. In the Station's license, these frequencies are assigned station class code FB7, which designates operation as a Private Carrier (Non-Profit), a general station class that does not itself convey any exclusive use rights.3 Accordingly, PST must share the Station's frequencies with other co-channel licensees.

1 See, e.g., WQJP447, West Covina, California; WQKB675, West Covina, California.

2 47 CFR § 90.173(a) ("Except as otherwise specifically provided in this part, frequencies assigned to land mobile stations are available on a shared basis only and will not be assigned for the exclusive use of any licensee.").

3 Compare 47 CFR §§ 90.7 (defining a private carrier as "[a]n entity licensed in the private services and authorized to provide communications service to other private services on a commercial basis") and 90.403(c) (establishing presumption of spectrum sharing for PLMR stations unless otherwise provided in Part 90 of the Rules) to 47 CFR § 90.187(e) (establishing interference protection in an "exclusive service area" for stations, such as FB8 stations, that the Commission has "authorized for centralized trunked operation").

3. On August 25, 2015, an agent from the Commission's Los Angeles Field Office (Los Angeles Office) investigated an interference complaint from Mobile Relay Associates (MRA), a co-channel licensee.⁴ During his investigation, the agent observed PST operating on 451.600 MHz and determined that PST was transmitting continuously for long periods of time and was not transmitting its call sign as required. The agent contacted PST and gave a verbal warning of these violations, whereupon, the licensee's representative committed to correct the violations.

4. On September 3, 2015, the Los Angeles Office received a subsequent complaint from MRA. In its complaint, MRA stated that, although PST was no longer operating the Station on 451.600 MHz, PST had merely shifted its operations to 451.350 MHz and was causing interference on that frequency. The agent investigated this complaint and, on September 24, 25, and December 7, 2015, observed PST operating on 451.350 MHz in the same impermissible manner (i.e., continuously for long periods of time and without transmitting the Station's call sign) as it had on 451.600 MHz.

5. On December 7, 2015, MRA reported to the Los Angeles Office that the interference MRA received from PST was so severe that MRA was forced to move its operations to a different frequency. On December 9, 2015, with MRA's cooperation, the field agent monitored MRA's transmissions on 451.350 MHz from MRA's facilities and found that PST's continuous operation on 451.350 MHz was almost completely blocking MRA's ability to use the shared frequency.

6. On March 22, 2016, the agent from the Los Angeles Office contacted PST's representative to discuss the interference that PST continued to cause to co-channel licensees on 451.350 MHz. The next day, PST's representative claimed to the agent that PST had ceased operating on 451.350 MHz and that PST would be implementing a new radio system on different frequencies.

7. On April 7, 2016, the Los Angeles Office issued a Notice of Violation to PST for violating the Commission's rules (Rules).⁵ In the NOV, the Los Angeles Office found that PST (a) was operating continuously on the shared frequency 451.350 MHz, and therefore was failing to restrict its transmissions to the minimal practical transmission time;⁶ (b) was not taking any other reasonable precautions to avoid causing harmful interference;⁷ and (c) was not transmitting its call sign as required by the Rules.⁸

8. PST responded to the NOV on April 22, 2016, and stated that it had incorrectly understood the meaning of the Station's FB7 license class.⁹ PST further stated that the users of the Station had obtained a new license in the public safety pool and expected to transition to the new facilities within 45 days.¹⁰ Yet, on July 6, 2016, an agent from the Los Angeles Office monitored the frequencies authorized under the Station's license in an area near the Station's fixed transmitter site. The agent observed that, although PST was no longer transmitting on 451.350 MHz, it had resumed continuous

⁴ Two Part 90 licenses issued to MRA, WPHH451 and WPHH446, are co-channel with PST on 451.350 MHz and 451.600 MHz.

⁵ See *Public Safety Technologies, Inc.*, Notice of Violation, V201632900004 (Apr. 7, 2016) (NOV) issued for failing to: 1) restrict the Station's transmissions to the minimum practical transmission time; 2) monitor the transmitting frequencies of other licensees or take other reasonable precautions to avoid causing harmful interference; and 3) transmit station ID in accordance with the Commission's rules and the Station's authorization.

⁶ NOV, citing 47 CFR § 90.403(c).

⁷ NOV, citing 47 CFR § 90.403(e).

⁸ NOV, citing 47 CFR § 90.425(a).

⁹ Response to Notice of Violation of Public Safety Technologies at 1 (Apr. 22, 2016) (on file in EB-FIELDWR-15-00019998).

¹⁰ *Id.*

operations on 451.600 MHz and did not transmit the Station's call sign as required under Section 90.425(a) of the Rules.

III. DISCUSSION

9. We find that PST apparently willfully and repeatedly violated Sections 90.403(c), 90.403(e), and 90.425 of the Rules, by operating the Station continuously on a frequency to which PST was not granted exclusive use, by failing to take reasonable precautions to avoid causing harmful interference to co-channel licensees operating on shared spectrum, and by failing to transmit the Station's call sign at regular intervals.¹¹

A. PST Apparently Violated Section 90.403(c) of the Rules by Operating the Station Continuously on Shared Spectrum

10. We find that the evidence in this case is sufficient to establish that PST willfully and repeatedly violated Section 90.403(c) of the Rules. Section 90.403(c) states that “[e]xcept for stations that have been granted exclusive channels under this part . . . , each licensee must restrict all transmissions to the minimum practical transmission time.”¹² As noted above, the Station's FB7 license class does not convey rights to use 451.350 MHz or 451.600 MHz on an exclusive basis. Yet, on several different dates, an agent from the Los Angeles Office found that PST operated the Station on a continuous basis for periods in excess of an hour. PST was notified of this violation in the NOV and has failed to modify the Station's operations. Accordingly, we find that PST's continuous use of 451.350 MHz and 451.600 MHz appears to violate its obligations to limit the Station's transmissions “to the minimum practical transmission time,” as required under Section 90.403(c) of the Rules.

B. PST Apparently Violated Section 90.403(e) of the Rules by Failing to Take Reasonable Precautions to Avoid Harmful Interference to Co-Channel Licensees Operating on Shared Spectrum

11. We find that the evidence in this case is sufficient to establish that PST willfully and repeatedly violated Section 90.403(e) of the Rules. Section 90.403(e) of the Rules states that “[l]icensees shall take reasonable precautions to avoid causing harmful interference. This includes monitoring the transmitting frequency for communications in progress and such other measures as may be necessary to minimize the potential for causing interference.”¹³ As discussed above, an agent from the Los Angeles Office determined that PST operated the Station on a continuous basis, thereby depriving co-channel users of any opportunity to operate on 451.350 MHz or 451.600 MHz.

12. Through its monopolization of 451.350 MHz and 451.600 MHz, PST caused harmful interference to at least one co-channel licensee: MRA. For PLMR stations, harmful interference is defined as “any emission, radiation, or induction which specifically degrades, obstructs, or interrupts the service provided by such stations.”¹⁴ On December 9, 2015, the agent from the Los Angeles Office observed that PST's continuous operations significantly degraded MRA's co-channel transmissions. Further, investigations following the issuance of the NOV show that PST continued to operate the Station in a manner that causes harmful interference to MRA's co-channel operations on 451.350 MHz and 451.600 MHz. As a result, we find that PST apparently willfully and repeatedly violated Section 90.403(e) of the Rules by failing to take reasonable precautions to avoid causing harmful interference.

¹¹ 47 CFR §§ 90.403(c), (e), 90.425(a).

¹² 47 CFR § 90.403(c).

¹³ 47 CFR § 90.403(e).

¹⁴ 47 CFR § 90.7.

C. PST Apparently Violated Section 90.425(a) of the Rules by Failing to Transmit the Station's Call Sign

13. We find that the evidence in this case is sufficient to establish that PST willfully and repeatedly violated Section 90.425(a) of the Rules. Section 90.425(a) of the Rules states that each land mobile station authorized under Part 90 of the Rules “shall be identified by the transmission of the assigned call sign during each transmission or exchange of transmissions, or once each 15 minutes (30 minutes in the Public Safety Pool) during periods of continuous operation.”¹⁵ Section 90.425(a) further states that the call sign must be “transmitted by voice in the English language or by International Morse Code.”¹⁶ On September 24, 2015; September 25, 2015; and December 7, 2015, an agent from the Los Angeles Office observed the Station's operations and found that the Station was not transmitting its call sign as required under Section 90.425(a) of the Rules. In addition, on July 6, 2016, three months following the issuance of the NOV, an agent observed that the Station was still failing to transmit its call sign. As a result, we find that PST apparently willfully and repeatedly violated Section 90.425(a) of the Rules by failing to transmit the Station's call sign.

D. Proposed Forfeiture

14. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that “willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission.”¹⁷ Here, Section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against PST of up to \$18,936 for each day of a continuing violation, up to a statutory maximum of \$142,021 for a single act or failure to act.¹⁸ In exercising our forfeiture authority, we must consider 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.”¹⁹ In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.²⁰ Under these guidelines, we may adjust a forfeiture upward for violations that

¹⁵ 47 CFR § 90.425(a).

¹⁶ *Id.*

¹⁷ 47 U.S.C. § 503(b).

¹⁸ *See* 47 U.S.C. § 503(b)(2)(D); 47 CFR §§ 1.80(b)(7), (9). These amounts reflect inflation adjustments to the forfeitures specified in Section 503(b)(2)(D) (\$10,000 per violation or per day of a continuing violation and \$75,000 per any single act or failure to act). The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321 (DCIA), as further amended by the Federal Reports Elimination Act of 1998, Pub. L. No. 105-362, Sec. 1301, 112 Stat. 3280, and as further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Sec. 701, Pub. L. No. 114-74, 129 Stat. 599 (codified as amended 28 U.S.C. § 2461 note) (the 2015 Inflation Adjustment Act), requires the Commission to adjust its penalties for inflation and publish interim final rules with the initial penalty adjustment amounts by July 1, 2016 and new penalty levels must take effect no later than August 1, 2016. *See* 28 U.S.C. § 2461 note. The Commission published those interim final rules on June 30, 2016. *See Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 16-644 (EB 2016); *see also Adjustment of Civil Monetary Penalties to Reflect Inflation*, 81 Fed. Reg. 42554 (June 30, 2016) (setting August 1, 2016, as the effective date for the increases). The adjustments to the civil monetary penalties adopted by the Bureau pursuant to 2015 Inflation Adjustment Act will apply only to such penalties assessed after the effective date of the amendments to Section 1.80(b). *See* 28 U.S.C. § 2461 note (6).

¹⁹ 47 U.S.C. § 503(b)(2)(E).

²⁰ 47 CFR § 1.80(b)(8), Note to paragraph (b)(8).

are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.²¹

15. Section 1.80(b) of the Rules sets a base forfeiture of \$7,000 for interference for each violation or each day of a continuing violation.²² The Los Angeles Office found evidence that PST caused harmful interference to a co-channel licensee in violation of Section 90.403(e) on one occasion, December 9, 2015. Accordingly, we propose a base forfeiture amount of \$7,000 for this violation.

16. For a failure to transmit a call sign, Section 1.80(b) of the Rules sets a base forfeiture amount of \$1,000 for each violation or each day of a continuing violation.²³ The Los Angeles Office determined that the Station failed to transmit its call sign, as required under Section 90.425(a) of the Rules, on four occasions: September 24, 2015; September 25, 2015; December 7, 2015; and July 6, 2016. For PST's four apparent violations of Section 90.425(a) of the Rules, we collectively propose a base forfeiture amount of \$4,000.

17. Neither the Commission's forfeiture guidelines nor its case law establishes a base forfeiture for violations of PST's obligation to restrict transmissions to "the minimum practical transmission time and to employ efficient operating procedure designed to maximize utilization of the spectrum" in accordance with Section 90.403(c) of the Rules.²⁴ Thus, we look to the base forfeitures established or issued in analogous cases for guidance.²⁵ In this regard, we note that the Commission has established a base forfeiture amount of \$4,000 for "unauthorized emissions," a category that we have applied to violations of temporal operating restrictions, such as operating an AM broadcast station at times other than those specified on its license.²⁶ While neither the Station's license nor Section 90.403(c) establish specific times during which the station is permitted to operate, the requirement to minimize transmission times is expressly temporal in nature, and, as such, is analogous to prior cases. We therefore conclude that it is appropriate to propose a base forfeiture amount of \$4,000 for PST's apparent violation of Section 90.403(c) of the Rules.

18. Accordingly, we propose a total base forfeiture of \$15,000. We have discretion, however, to depart from the guidelines discussed above, taking into account the particular facts of each individual case.²⁷ Given the totality of the circumstances, and consistent with the *Forfeiture Policy Statement*, we conclude that a significant upward adjustment is warranted. Because PST continued to operate the Station in this manner for at least 90 days following the issuance of the NOV notifying it that its actions violated the Rules, we find that a significant upward forfeiture adjustment is warranted. Therefore, after applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors, we propose a total forfeiture of \$25,000 for which PST is apparently liable.

²¹ *Id.*

²² 47 CFR § 1.80(b).

²³ 47 CFR § 1.80(b).

²⁴ 47 CFR § 90.403(c).

²⁵ See, e.g., *Terracom, Inc. and YourTel America, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 13325, 13342, para 47 (2014).

²⁶ See *JHT Ventures, Inc., Licensee of Station KULF, Bellville, Texas*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 2072, 2073, paras. 4-5 (EB 2012).

²⁷ *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, 17098-99, para. 22 (1997) (noting that "[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act") (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

IV. CONCLUSION

19. We have determined that PST apparently willfully and repeatedly violated Sections 90.403(c), 90.403(e), and 90.425(a) of the Rules. As such, PST is apparently liable for a forfeiture of \$25,000.

V. ORDERING CLAUSES

20. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act²⁸ and Sections 1.80 of the Rules,²⁹ Public Safety Technologies, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Twenty-Five Thousand Dollars (\$25,000) for willful and repeated violations of Sections 90.403(c), 90.403(e), and 90.425 of the Rules.³⁰

21. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,³¹ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Public Safety Technologies, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 24 below.

22. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Public Safety Technologies, Inc. shall send electronic notification of payment to WR-Response@fcc.gov and Matthew.Gibson@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.³² When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

23. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th

²⁸ 47 U.S.C. § 503(b).

²⁹ 47 CFR § 1.80.

³⁰ 47 CFR §§ 90.403(c), 90.403(e), 90.425.

³¹ 47 CFR § 1.80.

³² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Street, SW, Room 1-A625, Washington, DC 20554.³³ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

24. 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 1.16 and 1.80(f)(3) of the Rules.³⁴ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Field Division, ATTN: Matthew L. Gibson, Field Counsel, Room 4-A337, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to WR-Response@fcc.gov and Matthew.Gibson@fcc.gov.

25. 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.

26. **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 Richard Young, President, Public Safety Technologies, Inc., 719 Arrow Grand Circle, Covina, California 91722.

FEDERAL COMMUNICATIONS COMMISSION

Lark Hadley
Regional Director, Region Three
Enforcement Bureau

³³ See 47 CFR § 1.1914.

³⁴ 47 CFR §§ 1.16, 1.80(f)(3).