

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

In the Matter of	)	
	)	
Uniradio Corp.,	)	File No. EB-04-SE-016
Holder of Permit to Transmit or Deliver	)	NAL/Acct. No. 200532100003
Programming to a Foreign Broadcast Station	)	FRN: 008982407

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: October 15, 2004**

**Released: October 20, 2004**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Uniradio Corp. (“Uniradio”) apparently liable for a forfeiture in the amount of twenty five thousand dollars (\$25,000) for providing program material from a studio located in the United States to a Mexican AM Station in willful and repeated violation of the terms and conditions of its authorization granted pursuant to Section 325(c) of the Communications Act of 1934, as amended (the “Act”).<sup>1</sup>

**II. BACKGROUND**

2. Under Section 325(c) of the Act, the transmission or delivery of broadcast programming from a facility in the United States to a foreign broadcast station, for the purpose of such programming being received in the United States, requires an application to and permit granted by the Commission. On May 27, 2003, Uniradio filed with the Commission an application for authority to supply Spanish language sports programming, namely, San Diego Padres baseball games, to Station XEMO. Uniradio represented that Station XEMO was located in Tijuana, Mexico and was authorized to operate on frequency 860 kHz with 5 kW power (daytime and nighttime) with a non-directional antenna. On July 16, 2003, the Commission’s International Bureau granted Uniradio’s application and issued it the Section 325(c) permit.<sup>2</sup> Specifically, the Section 325(c) permit authorized Uniradio to “locate, use or maintain a studio in the United States” for the purpose of transmitting or delivering “San Diego Padres baseball games, including a 15 minute pre-game show, in Spanish” to Mexican Station XEMO. The Section 325(c) permit expressly states that it is based on Uniradio’s “representation that the statements contained in the application[s] are true and that the undertakings described will be carried out in good faith,” and that it is conditioned upon the Mexican station’s “operation in full compliance with applicable treaties and

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<sup>1</sup>47 U.S.C. § 325(c).

<sup>2</sup>See File No. 325-NEW-20030527-00005 (granted July 16, 2003) (“Section 325(c) permit”).

related provisions concerning electrical interference to U.S. Broadcast stations.”<sup>3</sup>

3. On December 9, 2003, New Inspiration Broadcasting Company, Inc. (“NIBC”), licensee of Station KRLA(AM), Glendale, California, filed a petition to revoke Uniradio’s Section 325(c) permit.<sup>4</sup> NIBC maintained, and provided supporting engineering and technical documentation to demonstrate, that Station XEMO was operating at increased power levels from a new site, and that such operations was causing substantial harmful interference to Station KRLA(AM).<sup>5</sup> According to NIBC, Station XEMO was not operating with 5 kW power (daytime and nighttime) from geographic coordinates 32° 30’ 48” North Latitude and 117° 01’ 08” West Longitude, as authorized by the Mexican government.<sup>6</sup> Rather, NIBC maintained that Station XEMO was operating at power levels of 20 kW (daytime) and 10 kW (nighttime) from geographic coordinates 32° 25’ 21” North Latitude and 117° 04’ 32” West Longitude, and that such operations had not been coordinated with the Commission’s International Bureau in accordance with the 1986 U.S.-Mexico treaty<sup>7</sup> that governs the coordination of medium frequency AM band stations.<sup>8</sup>

4. On February 20, 2004, the Enforcement Bureau’s Spectrum Enforcement Division (“Division”) sent Uniradio a letter of inquiry (“LOI”).<sup>9</sup> In its response to the LOI,<sup>10</sup> Uniradio stated that it learned, after it applied for and was granted the Section 325(c) permit, that Station XEMO had increased power from a new site. Specifically, Uniradio stated that its General Manager, Ricardo Astiazaran, became aware “at some point prior to September 2003” that the Mexican government had modified Station XEMO’s authorization to allow transmission at increased power levels from a new antenna site,<sup>11</sup> and further, that Uniradio became aware on or about September 15, 2003, that Station XEMO, in fact, was operating at the increased power levels from the new antenna site.<sup>12</sup> Uniradio admitted that, it delivered sports programming to Station XEMO from mid-September to early October 2003, and that it resumed delivering such programming on March 5, 2004, after being notified on or about November 18, 2003, by Station KRLA(AM) of the alleged interference problem.<sup>13</sup> Uniradio further admitted that the

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<sup>3</sup>*Id.*

<sup>4</sup>*See* Petition to Revoke (December 9, 2003) (“Petition”).

<sup>5</sup>*Id.* at Exhibits 1-3.

<sup>6</sup>*Id.* at Exhibits 1-3.

<sup>7</sup>*See Agreement Between the Government of the United States of America and the Government of the United Mexican States Relating to the AM Broadcasting Service in the Medium Frequency Band*, 1986.

<sup>8</sup>Petition at 3 and Exhibits 2-3.

<sup>9</sup>*See* Letter from Joseph P. Casey, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Gustavo Enrique Asitiazaran, President, Uniradio Corp. (February 11, 2004).

<sup>10</sup>*See* Letter from Mark C. Del Bianco, Esq. to Marlene H. Dortch, Secretary, Federal Communications Commission (March 15, 2004) (“Response”).

<sup>11</sup>*Id.* at 2-3.

<sup>12</sup>*Id.* at 3.

<sup>13</sup>*Id.* at 2 and Attachment 1 at ¶ 7.

modifications to Station XEMO may have increased harmful interference to Station KRLA(AM).<sup>14</sup> However, Uniradio claimed that any increase in interference was *de minimis*,<sup>15</sup> and that the interference issue was being addressed through inter-governmental discussions (*i.e.*, between the Secretaria de Comunicaciones y Transportes (“SCT”) and the U.S. Department of State, with technical assistance from the Commission). In addition, Uniradio argued that Station XEMO was cooperating in an effort to resolve the issue and had agreed to conduct interference testing and operate at a reduced power level of 5 kW at a reduced bandwidth until the conclusion of testing and inter-governmental coordination.<sup>16</sup> Uniradio asserted that, under the circumstances, any enforcement action by the Commission, including revocation of its Section 325(c) permit, is not warranted.<sup>17</sup>

5. On March 26, 2004, NIBC filed a reply to Uniradio’s response.<sup>18</sup> NIBC maintained, and provided evidence, that Station XEMO’s operations at its current antenna site has created further overlap of its contour to Station KLRA(AM)’s protected 0.5 mV/m contour.<sup>19</sup> NIBC further maintained that, due to the increased overlap, Station XEMO’s utilization of a narrow bandwidth and reduction to a power level of 5 kW have not proven effective in redressing the continuing substantial interference to Station KRLA(AM).<sup>20</sup> Finally, NIBC maintained that Uniradio knew or should have known that Station XEMO’s operations at its current site had not been coordinated and authorized consistent with the U.S.-Mexico treaty, given that Uniradio and Station XEMO not only share common shareholders, but are both controlled by Gustavo Enrique Astiazaran.<sup>21</sup>

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<sup>14</sup>*Id.* at 2 and Attachment 1 at ¶ 3. In this connection, Uniradio noted that “Station KRLA has for years been receiving interference from the broadcast signal of Station XEMO because the stations have had overlapping service areas . . . throughout the same period, Station KRLA’s signal created interference to the Station XEMO signal.” Attachment 1 at ¶ 2.

<sup>15</sup>*See* Response at 2-4.

<sup>16</sup>*See* Response at 2 and Attachment 1 at ¶¶ 11-14 and Exhibit 3 at ¶¶ 3-12 (Declaration of Luis Carlos Astiazaran, director of Radiodifusora XEMO, S.A. de C.V. (“Radiodifusora XEMO”), licensee of Station XEMO).

<sup>17</sup>*See* Response at 2.

<sup>18</sup>*See* Reply of New Inspiration Broadcasting Company, Inc. to Response to Enforcement Bureau Investigation Letter (March 26, 2004) (“Reply”).

<sup>19</sup>*Id.* at 2-4.

<sup>20</sup>*Id.* at 2-3 and attached Statement by Herman E. Hurst, Jr., Carl T. Jones Corp., “Statement Regarding Prohibited Contour Overlap between Station XEMO, Tijuana, MX and KRLA, Glendale, CA” at 2 (opining that “XEMO must reduce power to 2.3 kW during daytime hours to maintain its current predicted 0.5 mV/m contour within the contour predicted to exist from the notified and accepted 5 kW facility. This variance is due to the increase in saltwater path existing between the respective transmitter sites of XEMO and the protected service area of KRLA”).

<sup>21</sup>Uniradio acknowledged that it has “common shareholders” with Station XEMO’s Mexican licensee, Radiofusora XEMO. *See* Response at Attachment 1 at ¶ 8. However, it appears that Radiofusora XEMO, in fact, may be controlled by Uniradio’s president Gustavo Enrique Astiazaran. *See* Reply at 4-5; *see also* Marcelo Ballve’s, [Border radio: Tijuana’s Uniradio wants the best of both worlds -- hometown fans plus San Diego’s Hispanics](#), Latin Trade, December 2002 (stating that Tijuana’s family-owned Uniradio “need[s] no passport to cross borders” to serve “the number of Hispanic listeners growing in San Diego with programming provided by its several Mexican broadcast stations”); <http://www.signonsandiego.com/news.features/tjarts/television.html> (continued....)

### III. DISCUSSION

6. Section 325(c) of the Act, as previously noted, prohibits the transmission or delivery of programming from a broadcast studio, place or other apparatus within the United States to a radio station in a foreign country “for the purpose of being broadcast from any radio station there having a power output of sufficient intensity and/or being so located geographically that its emissions may be received consistently in the United States, without first obtaining a permit from the Commission upon proper application therefor.”<sup>22</sup> Section 325(c) serves to prevent interference to broadcast stations’ signals, as well as the introduction of broadcast material deemed inimical to the public interest, within the United States.<sup>23</sup>

7. In the instant case, Uniradio admitted that, at the time it commenced delivery of the San Diego Padres games and related programming to Station XEMO, it knew the station’s facilities had been modified. However, given Uniradio’s apparent control of and relationship to Station XEMO,<sup>24</sup> it would appear that, at the time it applied for the Section 325(c) permit, it knew or had reason to know that the station’s facilities recently had been modified by the Mexican government and that such modifications were not coordinated with and approved by the Commission’s International Bureau and thus were not in compliance with the applicable U.S.-Mexico treaty<sup>25</sup> -- notwithstanding the fact that Uniradio’s Section 325(c) permit is explicitly conditioned upon such compliance with the treaty “and related provisions concerning harmful interference to U.S. Broadcast stations.” Moreover, in apparent defiance of, or disregard for, such explicit conditions, Uniradio further admitted that it continued to deliver programming after it was on notice, in November of 2003, that, as modified, Station XEMO’s operations were causing substantial -- not *de minimis* -- harmful interference to a licensed U.S. broadcast station. Based on the record before us, we thus find that, by delivering cross-border programming to Station XEMO, Uniradio undermined one of the primary objectives of Section 325 of the Act and apparently willfully and repeatedly violated the express terms and conditions of its Section 325(c) permit.

8. Section 503(b)(1)(A) of the Act,<sup>26</sup> and Section 1.80(a)(2) of the Rules,<sup>27</sup> provide that any  
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(stating that Gustavo Astiazaran Rosas acquired Station “XEMO/AM 860 “La Poderosa” in 1972, and has since acquired “five radio stations in Tijuana, one in Mexicali and four in Sonora” and that “the stations are promoted and marketed in San Diego via Uniradio ....”).

<sup>22</sup>See note 2, *supra*.

<sup>23</sup>See *American Broadcasting Cos., Inc.*, 35 FCC 2d 1, 5-6 ¶ 9 (1972); see also *Fox Television Stations, Inc.*, 77 RR 2d 132, 133, 137-38 ¶¶ 5, 30, 33-35 (1994), *vacated and remanded on other grounds, Channel 51 of San Diego v. FCC*, 79 F.3d 1187, 1188-89 (D.C. Cir. 1996), *rev’d on remand, Fox Television Stations, Inc.*, 11 FCC Rcd 14870, 14875-78 ¶¶ 16-25 (1996); *aff’d sub nom, Radio Television S.A. de C.V. et al. v. FCC*, 130 F.3d 1078 (D.C. Cir. 1997).

<sup>24</sup>See note 21 and accompanying text, *supra*.

<sup>25</sup>Indeed, we note that the timing of Station XEMO’s authorization for modifications and its modified operations seems to coincide with Uniradio’s application to deliver and its delivery of the San Diego Padres games and related programming. Uniradio stated that on March 6, 2003, Station XEMO’s authorization was modified by the Mexican government, and our records reflect that on May 27, 2003, Uniradio filed its Section 325(c) application. See Response, Attachment 1 at ¶ 3. Uniradio also stated that on or about September 15, 2003, Station XEMO began operating as modified, and Uniradio began delivering the cross-border programming. *Id.* at ¶ 6.

<sup>26</sup>47 U.S.C. § 503(b)(1)(A).

person who willfully or repeatedly fails to substantially comply with the terms and conditions of a Commission issued permit, license or other authorization shall be liable for a forfeiture penalty. The forfeiture amount for entities other than broadcast licensees or permittees, cable television operators and common carriers may not exceed \$11,000 for each violation or each day of a continuing violation, up to a maximum of \$87,500 for any single continuing violation.<sup>28</sup> In determining the appropriate forfeiture amount, we must consider the factors enumerated in Section 503(b)(2)(D) of the Act, 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.”<sup>29</sup>

9. Neither the *Forfeiture Policy Statement* nor the rules establish a base forfeiture amount for supplying program material to a foreign broadcast station in violation of the terms of an authorization granted pursuant to Section 325(c) of the Act.<sup>30</sup> However, we believe a substantial forfeiture is warranted. Considering the facts of this case -- including the fact that Uniradio’s violation continued long after it not only knew or had reason to know that Station XEMO’s modified operations were not in compliance with the applicable treaty, and further after it was notified that such modified operations was causing substantial harmful interference to a licensed U.S. broadcast station -- we find that it is appropriate to propose a \$25,000 forfeiture.<sup>31</sup> In so proposing the \$25,000 forfeiture, we understand that coordination of Station XEMO’s operations has recently been completed in compliance with the U.S.-Mexico treaty. However, consistent with precedent, we do not find that subsequent remedial measures lessen or excuse its past violations of the Act.<sup>32</sup>

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<sup>27</sup>47 C.F.R. § 1.80(a)(2).

<sup>28</sup>See 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(b)(3).

<sup>29</sup>47 U.S.C. § 503(b)(2)(D); *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17110 (1997), *recon. denied* 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

<sup>30</sup>The fact that there is no established base forfeiture amount for this violation does not indicate that no forfeiture should be imposed. The *Forfeiture Policy Statement* states that “... any omission of a specific rule violation from the ... [forfeiture guidelines] ... should not signal that the Commission considers any unlisted violation as nonexistent or unimportant.” *Forfeiture Policy Statement*, 12 FCC Rcd at 17099. The Commission retains the discretion, moreover, to depart from the *Forfeiture Policy Statement* and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in Section 503 of the Act. *Id.*

<sup>31</sup>See *Pacific Spanish Network, Inc.*, DA 04-2259 (Enf. Bur. released July 30, 2004) (“*PSN*”) (proposing a \$20,000 forfeiture for supplying cross-border programming to a Mexican station, which was not in compliance with the applicable treaty and which caused harmful interference to licensed U.S. broadcast stations). The Section 325(c) permittee in *PSN* continued to deliver cross-border programming after it learned that the station’s operations were not in compliance and were interfering with U.S. broadcast station’s signals, but ultimately ceased delivery of such programming and cancelled its permit. In contrast, Uniradio continued to deliver programming throughout the San Diego Padres’ season. Under the circumstances, Uniradio’s continuing violations warrant a higher forfeiture.

<sup>32</sup>See, e.g., *AT&T Wireless Services, Inc.*, 17 FCC Rcd 7891 (2002), *forfeiture ordered*, 17 FCC Rcd 21866, 21875-76 ¶¶ 26-28 (2002); *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 ¶ 7 (1994); *TCI Cablevision of Maryland, Inc.*, 7 FCC Rcd 6013, 6014 ¶ 8 (1992).

#### IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to pursuant to Section 503(b) of the Act<sup>33</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>34</sup> Uniradio Corp. **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty five thousand dollars (\$25,000) for willfully and repeatedly violating the express terms and conditions of its Section 325(c) permit.

11. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture and Order*, Uniradio Corp. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. 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 Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>35</sup>

13. The response, if any, 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.

14. 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; 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.

15. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>36</sup>

16. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture and Order* shall be sent by first class mail and certified mail return receipt requested to Gustavo Enrique Astiazaran, President, Uniradio Corp., 5030 Camino De La Siesta, Suite 403, San

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<sup>33</sup>47 U.S.C. § 503(b).

<sup>34</sup>47 C.F.R. § 0.111, 0.311 and 1.80.

<sup>35</sup>See 47 C.F.R. § 1.1914.

<sup>36</sup>See 47 C.F.R. § 1.1914.

Diego, California 92108, to counsel for Uniradio Corp., Mark Del Bianco, Esq., 3929 Washington Street, Kensington, Maryland 20895, and to counsel for New Inspiration Broadcasting Company, Inc., Ann Bavender, Fletcher, Heald & Hildreth, PLC, 1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor, Arlington, Virginia 22209-3801.

17. **IT IS FURTHER ORDERED** that the Petition to Revoke filed by New Inspiration Broadcasting Company, Inc., on December 9, 2003, **IS DISMISSED** as moot, and that proceeding **IS HEREBY TERMINATED**.<sup>37</sup>

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey  
Chief, Spectrum Enforcement Division  
Enforcement Bureau

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<sup>37</sup>For purposes of the forfeiture proceeding initiated by this *NAL*, Uniradio Corp. shall be the only party.