

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

In the Matter of
Clamor Broadcasting Network Inc.
Licensee of WJVP-FM
Bayamon, PR 00958
File Number EB-04-SJ-042
NAL/Acct. No. 200532680001
FRN 0008403388

FORFEITURE ORDER

Adopted: October 17, 2005

Released: October 19, 2005

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000) to Clamor Broadcasting Network Inc. ("Clamor"), licensee of non-commercial educational station WJVP-FM, Culebra, Puerto Rico, for willful and repeated violation of Section 73.1125 of the Commission's Rules ("Rules").

II. BACKGROUND

2. In March of 2000, an agent from the Commission's San Juan, Puerto Rico Resident Agent Office of the Enforcement Bureau ("San Juan Office") inspected radio station WJVP-FM. The San Juan Office issued to Clamor a Notice of Violation for failure to maintain a main studio in violation of Section 73.1125 of the Rules and failure to maintain operational EAS equipment in violation of Section 11.35 of the Rules.

3. On August 11, 2004, an agent from the San Juan Office inspected radio station WJVP-FM at their studio located on Granada Street, Urb. Alahambra, Bayamon, Puerto Rico. The station did not have the required EAS equipment installed. According to the operator, the station's engineer had removed it during March or April of 2004. When the agent requested to see the EAS log, the operator provided a log that appeared to belong to another station WKVN-FM, Levittown, Puerto Rico. The last test listed in this log was performed on March 10, 2004. The station's only studio was located on Granada Street, Urb. Alahambra, Bayamon, Puerto Rico, outside of Culebra, the station's community of license. The studio was approximately 16 miles outside the station's principal community contour, and there were no other broadcast stations licensed to Culebra. Finally, the studio was also more than 25

147 C.F.R. § 73.1125.

miles (approximately 65 miles) from the reference coordinates of the center of its community of license.

4. On November 16, 2004, the San Juan Office issued a *Notice of Apparent Liability for Forfeiture* to Clamor in the amount of fifteen thousand dollars (\$15,000) for the apparent willful and repeated violation of Sections 11.35 and 73.1125 of the Rules.² Clamor filed a response to the *NAL* requesting reconsideration of the proposed forfeiture on December 22, 2004.³ Clamor's response included additional information and statements regarding the August inspection.

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Rules,⁵ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"). In examining Clamor'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, ability to pay, and other such matters as justice may require.⁶

6. Section 11.35 of the Rules requires that EAS Encoders, EAS Decoders and Attention Signal generating and receiving equipment used as part of the EAS be installed so that the monitoring and transmitting functions are available during the times the stations and systems are in operation.⁷ In its response to the *NAL*, Clamor claims that station WJVP-FM had operational EAS equipment installed at its auxiliary studio in Fajardo, Puerto Rico. Clamor also states that its Station Engineer, who was aware of this fact, was out sick on August 11, 2004. On January 20, 2005, an agent was able to confirm that station WJVP-FM had operational EAS equipment installed at its auxiliary studio and observe the station's EAS logs dating back to August 11, 2003. Accordingly, based on Clamor's subsequent statements and our confirmation of this new information, we have determined there was no violation of the EAS Rules, and we cancel the proposed forfeiture.⁸

7. Section 73.1125 of the Rules requires broadcast stations to maintain a studio at one of the following locations: (1) within the station's community of license; (2) at any location within the principal community contour of any broadcast station licensed to the station's community of license; or (3) within twenty-five miles from the reference coordinates of the center of its community of license.⁹ In its response to the *NAL*, Clamor states that it received a waiver of Section 73.1125 on November 2, 2000 to

²*Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532680001 (Enf. Bur., San Juan Office, November 16, 2004) ("*NAL*").

³Clamor states it misplaced the *NAL* and did not review the *NAL* until December 20, 2004. Clamor's request to accept its late-filed response was accepted by the Bureau.

⁴47 U.S.C. § 503(b).

⁵47 C.F.R. § 1.80.

⁶47 U.S.C. § 503(b)(2)(D).

⁷47 C.F.R. § 11.35(a).

⁸The base forfeiture for failure to have installed operational EAS equipment is \$8,000. *See* 47 C.F.R. § 1.80.

⁹47 C.F.R. § 73.1125.

operate as a satellite of its commonly owned non-commercial educational station WKVN-FM, Levittown, Puerto Rico. According to the Commission's database, however, Clamor applied for an assignment of its license for station WKVN-FM on August 28, 2003 and that assignment was consummated on April 7, 2004. In its response to the *NAL* and on January 20, 2005, Clamor admitted that it sold station WKVN-FM before July 2004. When Clamor sold station WKVN-FM, station WJVP-FM no longer operated under the November 2, 2000 waiver and was required to comply with Section 73.1125 of the Rules. While Clamor is building a new main studio within its service contour, station WJVP-FM's only working studio is currently located on Granada Street, Urb. Alahambra, Bayamon, Puerto Rico. The Bayamon studio is not located within any of the three locations specified in Section 73.1125 of the Rules. Thus, based on the evidence, we find that Clamor willfully¹⁰ and repeatedly¹¹ violated Section 73.1125 of the Rules by failing to maintain the station's main studio within the community of license, within the principal community contour of any broadcast station licensed to the station's community of license, or within twenty-five miles from the reference coordinates of the center of its community of license.

8. Clamor also asserts that it is unable to pay the \$7,000 proposed forfeiture for the main studio violation.¹² The Commission has determined that, in general, an entity's gross revenues are the best indicator of its ability to pay a forfeiture.¹³ After reviewing Clamor's claim and supporting documentation, we find that a reduction of the forfeiture based on inability to pay is not warranted.

9. We have examined Clamor's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we cancel the proposed forfeiture associated with the violation of Section 11.35 of the Rules, but conclude that Clamor willfully and repeatedly violated Section 73.1125 of the Rules. We find no basis for cancellation or reduction of the \$7,000 forfeiture proposed for this violation.

IV. ORDERING CLAUSES

10. 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(f)(4) of the Commission's Rules,¹⁴ the

¹⁰Section 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,' ... 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).

¹¹As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

¹²Clamor's request to accept its late-filed response was accepted by the Bureau. Its response to the *NAL* asserted it could not pay the proposed \$15,000 forfeiture. On January 20, 2005, Clamor also asserted it could not pay the \$7,000 proposed forfeiture for the main studio violation.

¹³See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

¹⁴47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

forfeiture in the amount of eight thousand dollars (\$8,000) for violation of Section 11.35 of the Rules proposed in the November 16, 2004 *Notice of Apparent Liability* issued to Clamor Broadcasting Network Inc. **IS CANCELED.**

11. **IT IS FURTHER ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Clamor Broadcasting Network Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of seven thousand dollars (\$7,000) for willfully and repeatedly violating Section 73.1125 of the Rules.

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁵ 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. The payment should note NAL/Acct. No. 200532680001, and FRN 0008403388. Requests for full payment under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.¹⁶

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Clamor Broadcasting Network Inc. at its record of address.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau

¹⁵47 U.S.C. § 504(a).

¹⁶See 47 C.F.R. § 1.1914.