

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

In the Matter of	)	
	)	
Claro Communications, LTD.	)	File Number EB-07-HU-048
	)	
Licensee of Station KBRN	)	NAL/Acct. No. 200832540001
Boerne, Texas	)	
Facility ID # 51961	)	FRN 0015929763
	)	

**FORFEITURE ORDER**

**Adopted:** January 15, 2008

**Released:** January 17, 2008

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 eight thousand eight hundred dollars (\$8,800) to Claro Communications, LTD., (“Claro”), licensee of station KBRN, in Boerne, Texas, for willful and repeated violation of Section 73.1125(a) of the Commission’s Rules (“Rules”) and the repeated violation of Section 73.1745(a) of the Rules.<sup>1</sup> The noted violations involve Claro’s failure to maintain a main studio and operation of its station at a power level exceeding that specified in its license.

**II. BACKGROUND**

2. On August 6, 2007, in response to a complaint, an agent from the Commission’s Houston Office of the Enforcement Bureau (“Houston Office”) investigated the operation of station KBRN in Boerne, Texas. The agent conducted field strength measurements on station KBRN’s radio signal at various times throughout the day and evening. These measurements indicated that the power output of station KBRN’s transmitter did not change during the day, near sunset, or well into the night.<sup>2</sup> Additionally, the agent was unable to locate a main studio for station KBRN in or near the town of Boerne, Texas.

3. On August 7, 2007, the agent from the Houston Office took field strength measurements at various times during the day and night. These measurements showed that the power level of station KBRN did not change after sunset local time, and was at the same level as observed the previous day.

4. On August 8, 2007, the agent from the Houston Office again took field strength measurements at various times during the day and night. These measurements showed that the power level of station KBRN did not change after sunset local time, and was at the same level as observed the previous two days. The agent, still attempting to locate a main studio for station KBRN, spoke by telephone to the owner of the station and a contract engineer employed to maintain the station’s transmitting equipment.

<sup>1</sup> 47 C.F.R. §§ 73.1125(a), 73.1745(a).

<sup>2</sup> The current license for station KBRN is for daytime operation only; however, station KBRN has been granted a Construction Permit by the Commission authorizing it to operate at a daytime power of 1900 watts and a nighttime power of 15 watts.

Both confirmed the station did not have a permanent main studio for station KBRN, but instead was operating temporarily out of a hair salon business in Boerne, Texas. Additionally, the owner stated the temporary studio did not have any employees of station KBRN reporting daily to that location and that the station had been operating under these conditions for about 60 days.

5. On August 9, 2007, the agent from the Houston Office met with the manager of station KBRN at the hair salon business to inspect the station's main studio. The station manager stated that no employees of the station worked at this location, but the employees of the hair salon knew to call him if anyone came in to discuss matters relating to the radio station. The station manager then showed the agent broadcast equipment typically used at a radio station studio installed in a back room closet of the hair salon. The equipment was not functioning and was not even connected to an electrical outlet. The manager explained that the equipment was never actually used to provide programming to the transmitter because the studio to transmitter radio link could not be made to function from this location. The manager further stated that a computer installed in the transmitter building at the transmitter site was providing programming for the station. After sunset still on August 9, 2007, the agent from the Houston Office met with a contract engineer employed by station KBRN at the station's transmitter site. The engineer confirmed the station was being operated unattended with a computer in the transmitter building providing programming. The engineer additionally determined that the station was still operating in its daytime mode and power although he did not immediately know why. The engineer set the station to its proper nighttime power and stated he would make arrangements to have the transmitter manually switched from daytime operating mode to nighttime operating mode until the automated control system could be repaired. After leaving the transmitter site, the agent from the Houston Office conducted field strength measurements that confirmed a dramatic reduction in the power level of station KBRN's signal.

6. On November 21, 2007, the Houston Office issued a *Notice of Apparent Liability for Forfeiture* to Claro in the amount of eleven thousand dollars (\$11,000) for the apparent willful and repeated violation of Section 17.1125(a) of the Rules and the apparent repeated violation of Section 73.1745(a) of the Rules.<sup>3</sup> Claro submitted a response to the *NAL* requesting a reduction or cancellation of the proposed forfeiture.

### III. DISCUSSION

7. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> 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 Claro'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.<sup>6</sup>

8. Section 73.1125(a) of the Rules requires broadcast stations to maintain a main studio.<sup>7</sup> "A station must equip the main studio with production and transmission facilities that meet applicable standards, maintain continuous program transmission capability, and maintain a meaningful management

<sup>3</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832540001 (Enf. Bur., Houston Office, November 21, 2007) ("*NAL*").

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>7</sup> 47 C.F.R. § 73.1125(a).

and staff presence.”<sup>8</sup> The Commission has defined a minimally acceptable “meaningful presence” as full-time managerial and full-time staff personnel.<sup>9</sup> On August 9, 2007, during normal business hours, no management or staff employees of station KBRN were present at its main studio in the hair salon in Boerne, Texas. Additionally, the equipment installed to provide the station with production and transmission capability at this location was not functioning. The station owner admitted that the main studio had been unattended by any station employees for about 60 days. The station manager also admitted that the main studio was not staffed and that its production and transmission equipment had never functioned. Thus, based on the evidence before us, we find that Claro willfully<sup>10</sup> and repeatedly<sup>11</sup> violated Section 73.1125(a) of the Rules by failing to maintain a main studio.

9. In its response to the *NAL*, Claro provides additional information, which asserts justifies a reduction or cancellation of the proposed forfeiture. Claro states that in July 2007, while the station was in the midst of moving its main studio, its sole principal was diagnosed with cancer and underwent treatment, thus preventing him from identifying a permanent main studio location and managing the move. Accordingly, between July and September 2007, Claro admits that it was not in compliance with the main studio requirements; the main studio was temporarily located at the transmitter site,<sup>12</sup> a hair salon, and then a church. Claro reiterates that this situation was temporary and that a new main studio has since been established. Claro asserts that a base forfeiture sanction is reasonable but that imposition of a \$7,000 forfeiture is grossly excessive, because it equates the situation with one in which there was no main studio or no meaningful management presence at all.

10. Claro, however, has not provided grounds upon which to cancel the forfeiture. It is undisputed that Claro’s main studio was neither staffed by staff members or management nor fully operational for at least one month prior to the agent’s inspection.<sup>13</sup> Therefore, its violation was willful and repeated. Although this situation was meant to be temporary and was exasperated by the sole principal/owner’s illness, it does not excuse the violation. Claro could have avoided the violation by applying for a waiver of the rules before it relocated its main studio to the temporary locations, or setting up a new compliant main studio prior to moving from its previously compliant main studio.<sup>14</sup> The *NAL* proposed a \$7,000 forfeiture, which is the base forfeiture amount for a main studio violation. As mentioned

---

<sup>8</sup> *Main Studio and Program Origination Rules*, Memorandum Opinion and Order, 3 FCC Rcd 5024, 5026 (1988).

<sup>9</sup> *Jones Eastern of the Outer Banks, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 3615, 3616 (1991), *clarified* 7 FCC Rcd 6800 (1992).

<sup>10</sup> Section 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).

<sup>11</sup> As 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. 97<sup>th</sup> 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).

<sup>12</sup> We note that the transmitter site was unattended and not accessible to the public, so it could not serve as a compliant main studio.

<sup>13</sup> We note that on August 8, 2007, the station owner/sole principal stated that the main studio had been unattended for approximately 60 days. This would mean that the station’s main studio was not in compliance with the rules in the beginning of June 2007. Claro did not address this prior statement in its response to the *NAL*.

<sup>14</sup> Claro’s sole principal decided to relocate the main studio prior to his illness. He could have chosen either of these options, during this decision-making process. Moreover, Claro employed a station manager, who could have obtained a waiver of the rules during the sole principal’s illness.

above, because the purported main studio(s) did not have functioning production and transmission capabilities and was not staffed by either managerial or staff personnel, Claro did not have a main studio, as required by the Rules. Thus, a \$7,000 base forfeiture is appropriate.<sup>15</sup>

11. Section 73.1745(a) of the Rules<sup>16</sup> states that no broadcast station shall operate at times, or with modes or power, other than those specified and made a part of the license, unless otherwise provided in this part. Station KBRN is authorized to operate with 1900 watts during the day and 15 watts at night. On August 6, 7, and 8, 2007, field strength measurements showed station KBRN did not reduce power from its daytime authorized power to its nighttime authorized power after sunset local time. On August 9, 2007, the station engineer confirmed that the station was not reducing its power at night and did not know why the station's automated control system was malfunctioning. Thus, based on the evidence before us, we find that Claro repeatedly violated Section 73.1745(a) of the Rules by operating the station at a power level exceeding that specified in its license.

12. In response to the *NAL*, Claro claims the forfeiture should be reduced or cancelled, citing *Sarkes Tarzian*.<sup>17</sup> In that case, the Commission found that the "omissions complained of have been freely conceded and corrected where within the power of applicants to do so, and such isolated and inadvertent rule violations raise no question regarding the fitness of applicants for renewal."<sup>18</sup> The Commission admonished the licensee to observe the public file rule scrupulously in the future. That case, however, involved a license renewal proceeding. Commission agents did not find willful and/or repeated violations in an enforcement proceeding. Rather, individuals submitted petitions to deny a renewal application alleging that two forms were missing from the public inspection files. Moreover, here, the agent found that the station operated overpower on at least three separate occasions, so the violations were not isolated. Accordingly, we find no grounds to cancel this violation.

13. Finally, Claro requests a reduction based on its good faith efforts to comply with Section 73.1125(a) of the Rules and its history of compliance with the Rules. In support of its request, Claro states it freely admitted to the events complained of during the inspection and took immediate steps to remedy both violations. However, corrective action taken to come into compliance with the Rules and cooperation with agents is expected, and does not nullify or mitigate any prior forfeitures or violations.<sup>19</sup> Because Claro has not been party to a prior enforcement action, we reduce the forfeiture to \$8,800, based on its history of compliance with the Rules.

14. We have examined Claro'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 conclude that Claro willfully and repeatedly violated Section 73.1125(a) of the Rules and repeatedly violations Section 73.1745(a) of the Rules. However, we reduce the forfeiture for these violations to \$8,800, based on Claro's history of compliance with the Rules.

#### IV. ORDERING CLAUSES

15. 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, Claro Communications, LTD. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight

---

<sup>15</sup> See, *RAMA Communications, Inc.*, Forfeiture Order, 22 FCC Rcd 13796 (2007) (assessing a \$7,000 forfeiture for failure to maintain main studio staffing). See also *Puget Sound Educational TV, Inc.*, Forfeiture Order, 22 FCC Rcd 17326 (2007), *Maria L. Salazar*, Memorandum Opinion and Order, 20 FCC Rcd 20598 (2005).

<sup>16</sup> 47 C.F.R. § 73.1745(a).

<sup>17</sup> 65 FCC2d 127 (1977).

<sup>18</sup> *Id.* at 130.

<sup>19</sup> See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

thousand eight hundred dollars (\$8,800) for violation of Sections 73.1125 and 73.1745 of the Rules.<sup>20</sup>

16. 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.<sup>21</sup> 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 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. 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.<sup>22</sup>

17. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Claro Communications, LTD. at its address of record and to its counsel, Christopher D. Imlay, Booth, Freret, Imlay & Tepper PC, 14356 Cape May Road, Silver Spring, MD 20904.

FEDERAL COMMUNICATIONS COMMISSION

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

---

<sup>20</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.1125, 73.1745.

<sup>21</sup> 47 U.S.C. § 504(a).

<sup>22</sup> See 47 C.F.R. § 1.1914.