

**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
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: June 18, 2008

Released: June 20, 2008

By the Associate Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order (“Order”), we deny the petition for reconsideration filed by Claro Communications, LTD. (“Claro”) of the *Forfeiture Order* issued January 17, 2008.¹ The *Forfeiture Order* imposed a monetary forfeiture in the amount of \$8,800 for Claro’s willful and repeated violation of Section 73.1125(a) of the Commission’s Rules (“Rules”) and repeated violation of Section 73.1745(a) of the Rules.² The noted violations involved 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.³ 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.

¹ *Claro Communications, LTD.*, Forfeiture Order, 23 FCC Rcd 359 (Enf. Bur. South Central Region 2008) (“*Forfeiture Order*”).

² 47 C.F.R. §§ 73.1125(a), 73.1745(a).

³ 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.

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. 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.⁴ Claro submitted a response to the *NAL* requesting a reduction or cancellation of the proposed forfeiture. On January 17, 2008, the Enforcement Bureau ("Bureau") reduced the forfeiture based on Claro's history of compliance with the rules and released the *Forfeiture Order*. The Bureau received Claro's petition for reconsideration on February 19, 2008, requesting cancellation of the forfeiture.

III. DISCUSSION

7. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁵ Section 1.80 of the Rules,⁶ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁷ In examining Claro's petition, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances,

⁴ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832540001 (Enf. Bur., Houston Office, November 21, 2007) ("*NAL*").

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 12 FCC Rcd. 17087 (1997), *recon. denied*, 15 FCC Rcd. 303 (1999).

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 any other such matters as justice may require.⁸

8. Claro asserts that the Bureau failed to consider “such matters as justice may require,” namely Claro’s owner’s serious illness. In its petition, Claro states that, while it was in the midst of a main studio location change in July 2007, its owner was diagnosed with cancer on July 23, 2007 and underwent surgery. This illness prevented Claro’s owner from being able to relocate the main studio and oversee station operations in August 2007. In its petition, Claro also states that it was forced to move from its previously compliant main studio location in July 2007. These statements, however, conflict with contemporaneous statements made by Claro’s owner on the telephone on August 8, 2007. On August 8, 2007, Claro’s owner stated on the telephone that the no station employees had been reporting daily to the temporary main studio and that the station had been operating like this for about 60 days. This would place the station’s move to a temporary and non-compliant location at approximately the beginning of June 2007. Claro’s attorney was provided several opportunities in which to clarify the timeline for Claro’s main studio relocation, but no response was provided. Claro’s owner was also contacted but he was unable to confirm or deny the timeframe for the main studio move.⁹ Therefore, we find no reason not to rely upon the contemporaneous statements made to our agent. While we are sympathetic to Claro’s owner’s illness, 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. Claro’s owner and station manager had over a month in which to do so, prior to the owner’s diagnosis with cancer. Accordingly, we do not find Claro’s petition for reconsideration persuasive and deny it.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 405(b) of the Communications Act of 1934, as amended, and Section 1.106(f) of the Commission’s Rules,¹⁰ the petition for reconsideration filed by Claro Communications, LTD. **IS DENIED**.

10. **IT IS ALSO ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹¹ Claro Communications, LTD. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand eight hundred dollars (\$8,800) for violation of Section 73.1125 and 73.1745 of the Rules.

11. 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.¹² Payment of the forfeiture must be made by check or similar instrument, payable to the order of the

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ Claro’s owner also asserted for the first time that the station had recently gone silent following a fire and had been conducting program tests immediately prior to the agent’s inspection. The owner stated that the main studio was not staffed, because it had not yet resumed full operations. According to the agent’s notes, Claro’s owner stated on August 8, 2007 that the station had been on the air for about two months. Claro did not submit any documentation with the Media Bureau to substantiate its statement. The only document on file with the Media Bureau states that the station began normal operations on August 30, 2006. Accordingly, we do not rely upon Claro’s assertion that it was conducting program tests in August 2007.

¹⁰ 47 C.F.R. § 1.106(f).

¹¹ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹² 47 U.S.C. § 504(a).

Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment[s] by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. FCC Form 159 may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Claro Communications, LTD. will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

12. **IT IS FURTHER ORDERED** that this Order shall be sent by regular mail and by 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

George R. Dillon
Associate Chief, Enforcement Bureau