



Federal Communications Commission
Washington, D.C. 20554

DA 09-1785
Released: August 13, 2009

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Roberto Gomez, President
Iglesia Jesucristo Es Mi Refugio, Inc.
2929 S. Westmoreland Rd.
Dallas, Texas 75233

Re: K43AG, Ridgecrest, CA
File No. BTTL-20081222ABE
Facility ID No. 34284
NAL/Acct. No. 0941420011
FRN: 0013086228

Dear Licensee:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR A FORFEITURE against Iglesia Jesucristo Es Mi Refugio, Inc. (Iglesia), licensee of the above-captioned station, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”), under authority delegated to the Chief, Media Bureau, by Section 0.283 of the Commission’s Rules, 47 C.F.R. §0.283. As set forth herein, we find and Iglesia admits that it engaged in unauthorized construction and operation of K43AG in violation of Section 73.1745 of the Commission’s Rules and made false certifications in violation of Section 73.1015 of the Commission’s Rules.

On December 22, 2008, Iglesia filed the above-captioned application for a license to cover construction of facilities.¹ That application was granted on January 12, 2009. However, after receiving a complaint that the station was not constructed, on February 12, 2009, we rescinded the grant of the license application and directed the licensee to provide more specific information concerning the alleged construction and operation of the station.

On March 6, 2009, Iglesia responded to the staff’s inquiry. Therein, it relates that on or about December 16, 2008, a tower crew working on its behalf went to the coordinates specified in the construction permit, but did not find a pre-existing 60-meter tower upon which the station’s antenna was to be placed. According to Ray Cantu, one member of the tower crew whose Declaration was submitted with Iglesia’s response, there was no existing tall tower at the specified coordinates, but rather a number of smaller towers approximately 30 meters in height he later learned were cell phone towers. Mr. Cantu further states that he believed that the specification of an existing sixty meter tower was a mistake, and assumed that an unidentified tower nearby was the correct location. Overall construction of the facilities took place over two days, and the station’s antenna was placed at a height of approximately 20 meters on the tower

¹ See BPTTL-20080114ACV.

on the existing tower selected by Mr. Cantu.² Moreover, Mr. Cantu states that after his crew completed construction, they confirmed that the station was operating properly.³ Mr. Cantu states that he informed Iglesia that the station was operating from the new location, but that he did not inform the licensee of the tower discrepancy.

Based on the belief that the station legally commenced broadcast operations, a license application was prepared and filed with the Commission. Iglesia states that the station operated intermittently from December 2008 until receipt of the Commission's February 12, 2009 letter, when operations from that location were permanently discontinued, and the station was moved back to the site specified in its outstanding license.⁴

Iglesia further reports that it subsequently learned that the 60-meter tower specified in the modification application was never built by its owner because terms could not be reached for the use of the land. Therefore, although the station was constructed and placed in operation at the location specified in the subject construction permit, it was not constructed on the proper tower or at the proper height.

Finally, Iglesia states that because the tower specified in the subject construction permit is no longer available, that facility will not be constructed. It therefore requests that the outstanding construction permit be cancelled and the above-captioned application for a license to cover construction be dismissed.⁵

Discussion. Based on the above admissions, it is now apparent that Iglesia improperly certified in its license application that the station was constructed and operating consistently with all the terms and conditions of its construction permit. Section 73.1015 of the Commission's Rules requires, in pertinent part, that "[n]o applicant . . . shall . . . in any application, pleading, or report or any other written statement submitted to the Commission, make any misrepresentation or willful omission bearing on any matter within the jurisdiction of the Commission."⁶ In addition, it is also apparent that Iglesia operated the subject station at variance from its authorization between December 2008 and February 2009. Section 73.1745 of the Commission's Rules states that no broadcast station shall operate at times, or with modes or power, other than those specified and made part of the license.⁷

² Mr. Cantu also states that it is his normal practice to take pictures of the construction of the station. Those pictures were submitted in the Iglesia's March 6, 2009 submission.

³ Mr. Cantu states that he confirmed that the station's signal was being received by local residents by turning on a television set to Channel 43. Iglesia has also provided letters from area residents confirming that the station was operating as represented.

⁴ BLTTL-20071206AAM.

⁵ Iglesia further advises that an application for a new site for modification of K43AG will be filed shortly.

⁶ See also Section 1.17(a)(2) of the Commission's Rules, 47 C.F.R. §1.17(a)(2).

While the false certification of the subject license application and unauthorized operation of K43AG was willful (as discussed more fully below), Iglesia's actions in this regard do not rise to the level of a pattern of misconduct so as to warrant exploration of its conduct in an evidentiary hearing. In this regard, we find that a substantial and material question of fact has not been raised with respect to Iglesia's qualifications to remain a Commission licensee. We believe, however, that Iglesia should be sanctioned for its false certification, and that a monetary forfeiture should be imposed for the apparent violation of Section 73.1015 of the Commission's Rules. Moreover, we also believe that Iglesia should also be sanctioned for its operation of K43AG at variance from its authorized parameters without prior Commission approval between December 2008 and February 2009 in violation of Section 73.1745 of the Commission's Rules. Because K43AG did not exceed authorized parameters with its reduced facilities during that time, and because Iglesia took prompt corrective action when it learned of such unauthorized operation, we find that admonishment of the licensee is appropriate for the station's brief operation at variance.

Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80(a) of the Commission's Rules each state that any person who willfully or repeatedly fails to comply with the provisions of the Communications Act or the Commission's rules shall be liable for a forfeiture penalty. Iglesia's conduct in this regard was both "willful" and "repeated" within the meaning of Section 503(b)(1)(B) of the Communications Act and Section 1.80(a)(2) of the Commission's Rules. As the Commission has held, an act or omission is "willful" if it is a conscious and deliberate act or omission, whether or not there is any intent to violate the rule. *See Southern California Broadcasting Company*, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3453 (1992). Further, a continuing violation is "repeated" if it lasts more than one day. *Id.* at 4388.

In *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999), the Commission adopted guidelines for assessing forfeitures. However, these guidelines do not enumerate a base forfeiture amount for a willful material omission. Under these circumstances, the forfeiture amount must be assessed, taking into account the relevant statutory factors in Section 503(b)(2) of the Communications Act, including "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." Based on our assessment of these factors, we conclude that Iglesia's apparent violation of Section 73.1015 with respect to both K43AG's constructed facility warrants this Notice of Apparent Violation for Forfeiture in the amount of \$5,000 for this violation. *See WRKL Rockland Radio, L.L.C.*, 14 FCC Rcd 1042 (MMB 1999). In this case, we believe that this amount is appropriate given the circumstances in which the violations arose, as well as our admonishment for the brief unauthorized operation of K43AG, as discussed above.

⁷ Moreover, Section 73.1635 provides that special temporary authority (STA) must be sought to permit the operation of a broadcast facility for a limited period at variance from its authorization, and that authority must be received prior to the commencement of such operation.

Based on our review of the facts and circumstances as set forth above, IT IS HEREBY ORDERED, That pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.283, and 1.80 of the Commission's Rules, Iglesia Jesucristo Es Mi Refugio, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the total amount of five thousand dollars (\$5,000) for willfully and repeatedly violating Section 73.1015 of the Commission's Rules.

IT IS FURTHER ORDERED, That pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this Notice, Iglesia Jesucristo Es Mi Refugio, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

Payment of the proposed 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 in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at 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 by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If 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).

The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and MUST INCLUDE the NAL/Acct. No. referenced above.

The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent'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.

Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁸

Sincerely,

James J. Brown
Deputy Chief, Video Division
Media Bureau

cc: Dan J. Alpert, Esquire

⁸ See 47 C.F.R. § 1.1914.