

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

In the Matter of)	
)	
NATIONAL FARMWORKERS SERVICE)	EB-07-IH-5266
CENTER, INC.)	Facility ID No. 21210
)	NAL/Account No. 201032080018
Licensee of Noncommercial Educational Station)	FRN 0006911408

KUFW(FM), Woodlake, California

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 15, 2010

Released: June 15, 2010

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that National Farm Workers Service Center, Inc. (the “Licensee”), licensee of noncommercial educational Station KUFW(FM), Woodlake, California (the “Station”), willfully and repeatedly broadcast prohibited advertisements in apparent violation of Section 399B of the Communications Act of 1934, as amended (the “Act”),¹ and Section 73.503(d) of the Commission’s rules.² Based upon our review of the facts and circumstances of this case, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of \$12,500.

II. BACKGROUND

2. On August 30, 2006, the Enforcement Bureau’s (the “Bureau’s”) San Francisco Field Office conducted an inspection of the Station and recorded a segment of its programming that appeared to include commercial announcements.³ Those announcements are excerpted in the attachment to this *NAL*. Thereafter, the Bureau sent letters of inquiry to the Licensee on August

¹ See 47 U.S.C. § 399b(a).

² See 47 C.F.R. § 73.503(d).

³ See RAMS Case Report, Case Number EB-06-SF-272, dated July 5, 2007 (“*RAMS Report*”).

26, 2008, and May 18, 2009.⁴ The Licensee responded to the Bureau's inquiries on September 24, 2008, June 17, 2009, and August 27, 2009.⁵

3. The Licensee acknowledges that it broadcast four different announcements over 2,000 times in total between March 2006 and December 2006, one on behalf of Mario's Auto Sales, two on behalf of Big Brand Tire, and one on behalf of Muebleria La Tapatia.⁶ The Licensee acknowledges that it executed contracts with these three for-profit entities to air the announcements for monetary remuneration.⁷ The Licensee avers that the Bureau's transcript and translation for the Mario's Auto Sales announcement are consistent with the announcement aired by the Station.⁸ Finally, the Licensee provided the transcript and translation for the Big Brand Tire and Muebleria La Tapatia announcements.⁹

III. DISCUSSION

4. Under Section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹⁰ Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.¹¹ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹² and the Commission has so interpreted the term in the Section 503(b) context.¹³ The Commission may also assess a forfeiture for violations that are

⁴ See Letter from Kenneth M. Scheibel, Jr., Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to National Farm Workers Service Center, Inc., dated August 26, 2008 ("*First LOI*"); Letter from Kenneth M. Scheibel, Jr., Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission to National Farm Workers Service Center, Inc., dated May 18, 2009 ("*Second LOI*").

⁵ See Letter from George R. Bosari, Jr., Attorney for National Farm Workers Service Center, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated September 24, 2008 ("*First LOI Response*"); Letter from George R. Bosari, Jr., Attorney for National Farm Workers Service Center, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated June 17, 2009 ("*Second LOI Response*"); Supplemental Letter from Anne Thomas Paxson, Attorney for National Farm Workers Service Center, Inc., to Anita Patankar-Stoll, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated August 27, 2009 ("*Supplement*").

⁶ See *Second LOI Response* at 2.

⁷ See *id.*

⁸ The Licensee states that it cannot locate its own text and translation of the Mario's Auto Sales announcement, but it believes that the Bureau's script is consistent with a prerecorded call that was playing on air. See *id.*

⁹ See *Supplement* at 1-3.

¹⁰ See 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

¹¹ 47 U.S.C. § 312(f)(1).

¹² See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹³ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

merely repeated, and not willful.¹⁴ “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.¹⁵ In order to impose such a penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such penalty should be imposed.¹⁶ The Commission will then issue a forfeiture if it finds, by a preponderance of the evidence, that the person has willfully or repeatedly violated the Act or a Commission rule.¹⁷ As described in greater detail below, we conclude under this procedure that the Licensee is apparently liable for a forfeiture in the amount of \$12,500 for its apparent willful and repeated violation of the Commission’s underwriting rules.

A. The Licensee Has Willfully and Repeatedly Broadcast Advertisements in Apparent Violation of Section 399B of the Act and Section 73.503(d) of the Commission’s Rules

5. Advertisements are defined by the Act as program material broadcast “in exchange for any remuneration” and intended to “promote any service, facility, or product” of for-profit entities.¹⁸ The pertinent statute specifically provides that noncommercial educational stations may not broadcast advertisements.¹⁹ Although contributors of funds to such stations may receive on-air acknowledgements, the Commission has held that such acknowledgements may be made for identification purposes only, and should not promote the contributors’ products, services, or businesses.²⁰ Specifically, such announcements may not contain comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent or lease.²¹ At the same time, however, the Commission has acknowledged that it is at times difficult to distinguish between language that promotes versus that which merely identifies the underwriter.²² Consequently, the Commission expects that licensees exercise reasonable “good faith” judgment in this area, and affords some latitude to the judgments of licensees who do so.²³

¹⁴ See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) (“*Callais Cablevision*”) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage).

¹⁵ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388 ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362 ¶ 9.

¹⁶ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

¹⁷ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 ¶ 4 (2002) (forfeiture paid).

¹⁸ 47 U.S.C. § 399b(a).

¹⁹ See *id.*

²⁰ See *Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Public Notice (1986), *republished*, 7 FCC Rcd 827 (1992) (“*Public Notice*”).

²¹ See *id.*

²² See *Xavier University*, Memorandum Opinion and Order, 5 FCC Rcd 4920, 4921 (1990) (“*Xavier*”) (citing *Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Memorandum Opinion and Order, 90 FCC 2d 895, 911 (1982), *recons.*, 97 FCC 2d 255 (1984); *Public Notice*, *supra* note 20).

²³ See *id.*

6. After careful review of the record in this case, we find that the four announcements set forth in the attached transcript and made on behalf of three for-profit entities apparently exceed the bounds of what is permissible under Section 399B of the Act and the Commission's pertinent rules and policies notwithstanding the "good faith" discretion afforded licensees under *Xavier*. We conclude that they appear to constitute prohibited advertisements because they distinguish favorably the respective for-profit underwriters from their competitors by stating or implying that they offer superior service, products or price, describe their underwriters through comparative and qualitative references, and include inducements intended to entice customers to visit their businesses.²⁴

7. Specifically, we find that the Mario's Auto Sales announcement impermissibly promotes the underwriter and its product through the use of favorable and qualitative expressions such as "beautiful Harley Davidson light trucks,"²⁵ "we have it here," and "where we are proud to be Mexicans."²⁶ This announcement also contains inducements, such as "whatever vehicle with no down payment."²⁷

8. The two announcements for Big Brand Tire impermissibly seek to distinguish the underwriter's products.²⁸ The first announcement claims that the company's rims "will make you stand out" and "make your vehicle unique."²⁹ It also uses comparative phrasing such as, "We have the most recent selection when it comes to rims from A to Z" and "we don't give you a cat for a rabbit here."³⁰ The announcement also includes an inducement for free tire alignments and free flat tire repairs to encourage patronage.³¹ The second announcement contains qualitative statements such as the company "knows about tires."³² It also uses comparative phrasing by stating that the company's product "reduces [the] loss [of tire] pressure" and has "less risk of suffering damages . . . last longer and [is] not too expensive."³³ It promises that patronage could cause you to "save more . . . [and] save more in gas per mileage."³⁴

9. Similarly, the Muebleria La Tapatia announcement includes impermissible comparative expressions that attempt to distinguish the company from its competitors, such as "they want to imitate, but countrymen, they will never be able to be the same."³⁵ Additionally,

²⁴ Cf. *Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations*, 90 FCC 2d at 900 n.16 (noting that institutions which qualify under IRS guidelines as not-for-profit organizations may be promoted).

²⁵ See *Attachment, infra*, Mario's Auto Sales Announcement.

²⁶ See *id.*

²⁷ See *id.*

²⁸ See *Attachment, infra*, Big Brand Tire Announcement #1, Big Brand Tire Announcement #2.

²⁹ See *Attachment, infra*, Big Brand Tire Announcement #1.

³⁰ See *id.* This is a Spanish-language expression that means "we won't pass off a fake product for the real thing."

³¹ See *Attachment, infra*, Big Brand Tire Announcement #1.

³² See *Attachment, infra*, Big Brand Tire Announcement #2.

³³ See *id.*

³⁴ See *Attachment, infra*, Big Brand Tire Announcement #2.

³⁵ See *Attachment, infra*, Muebleria La Tapatia Announcement.

this announcement contains qualitative statements and inducements including, “the hottest prices are at MLT,”³⁶ and “everyone else is melting because they can’t [compete] with our factory prices,”³⁷ “MLT offers you easy credit,” and “the one that gives credit to almost everyone.”³⁸

10. None of the foregoing announcements are permissible under *Xavier* because each, in the context presented is “clearly promotional.”³⁹ Each announcement refers either to specific qualities or attributes of the respective underwriters and their products and seeks to distinguish them from competitors, or contains language of inducement.

B. Proposed Action

11. Pursuant to the Commission’s *Forfeiture Policy Statement* and Section 1.80 of the rules, the base forfeiture for violations of the enhanced underwriting requirements is \$2,000.⁴⁰ In assessing the monetary forfeiture amount, we must take into consideration the factors enumerated in Section 503(b)(2)(E) of the Act, which include “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.”⁴¹

12. In this case, it appears that, from March 2006 through December 2006, the Licensee willfully and repeatedly broadcast four separate advertisements over 2,000 times in total in violation of Section 399B of the Act and Section 73.503(d) of the Commission’s rules. We have considered the period of time over which the prohibited announcements were aired and the number of announcements at issue, as well as the forfeiture actions in other underwriting cases,⁴² to determine the forfeiture appropriate for this matter. Applying the *Forfeiture Policy Statement* and the statutory factors to this case, we conclude that the Licensee is apparently liable for a forfeiture in the amount of \$12,500 for willfully and repeatedly violating the Commission’s underwriting rules.

13. As we stated in *Power Radio Corporation*, we caution the Licensee and all noncommercial educational licensees that, in future cases, violations of the type encountered here may result in even harsher sanctions than we propose in this case.⁴³ Licensees have an ongoing duty to understand and carefully abide by the limitations in the Act and in our rules concerning advertising on noncommercial stations. The nature of the violations here reflects an unacceptable

³⁶ *See id.*

³⁷ *See id.*

³⁸ *See id.*

³⁹ *See Xavier*, 5 FCC Rcd at 4920 ¶ 6.

⁴⁰ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17115 (1997) (“*Forfeiture Policy Statement*”), *recons. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b).

⁴¹ 47 U.S.C. § 503(b)(2)(E). *See also Forfeiture Policy Statement*, 12 FCC Rcd at 17100 ¶ 27.

⁴² *See, e.g., Caguas Educational TV, Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 6093 (Enf. Bur. 2005) (\$10,000 forfeiture proposed for two announcements broadcast over 1600 times over six months) (forfeiture paid) (“*Caguas*”). The instant case is more egregious than *Caguas* in many respects, including more violative announcements at issue and more repetitions of the content being aired, that serve to justify a forfeiture higher than the \$10,000 forfeiture imposed in *Caguas*.

⁴³ *See Power Radio Corp.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 2572, 2577 ¶ 12 (Enf. Bur. 2009).

disregard for that duty and we intend to deter such behavior in the future by appropriate necessary means, including substantially higher forfeitures.

IV. ORDERING CLAUSES

14. 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 of the Commission's rules, National Farm Workers Service Center, Inc., licensee of noncommercial educational television Station KUFW (FM), Woodlake, California, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of \$12,500 for willfully and repeatedly broadcasting advertisements in violation of Section 399B of the Act, 47 U.S.C. § 399b and Section 73.503(d) of the Commission's rules, 47 C.F.R. § 73.503(d).

15. **IT IS FURTHER ORDERED**, pursuant to Section 1.80 of the Commission's rules, that within thirty days of the release of this Notice, the Licensee **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

16. 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/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 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. 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. The Licensee will also send electronic notification on the date said payment is made to Hillary.DeNigro@fcc.gov, Ben.Bartolome@fcc.gov, Anjali.Singh@fcc.gov, and Anita.Patankar-Stoll@fcc.gov.

17. The response, if any, shall be mailed to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W, Room 4-C330, Washington DC 20554 and **SHALL INCLUDE** the NAL/Acct. No. referenced above. To the extent practicable, the response should also be sent by electronic mail to Hillary.DeNigro@fcc.gov, Ben.Bartolome@fcc.gov, Anjali.Singh@fcc.gov, and Anita.Patankar-Stoll@fcc.gov.

18. 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.

19. **IT IS ALSO ORDERED** that the complaint **IS GRANTED** to the extent indicated herein, and the instant complaint proceeding **IS HEREBY TERMINATED**.

20. **IT IS FURTHER ORDERED** that a copy of this Notice shall be sent, by Certified Mail/Return Receipt Requested, to National Farm Workers Service Center, Inc., P.O. Box 62, Keene, California, 93531, and George R. Borsari, Esq., Borsari & Paxson, 4000 Albemarle Street, N.W., Suite 100, Washington, D.C. 20016.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief
Enforcement Bureau

ATTACHMENT

The following text was transcribed and translated from Spanish to English from underwriting announcements broadcast over noncommercial educational Station KUFW(FM), Woodlake, California from March 2006 through December 2006.

Mario's Auto Sales

Nine in the morning with a few minutes, we rise early, we are already here, and all the cars are arriving here at Mario's Auto Ford. Thank you Mouse for giving me the opportunity to greet all the people that listen to La Campesina, our working people [unintelligible] of the morning, to all housewives that are already at home. We send our regards to the people who are looking for a car, a light truck, an SUV, whatever type of economical car in gasoline; we have it here at Mario's Auto Sales. We have here light Chevy trucks, beautiful Harley Davidson light trucks, Escalade [unintelligible], whatever vehicle with no down payment [unintelligible] and you can meet us here at Alto de Sierra here [unintelligible] at Grape at 1630 East Monte Way, here in the City of [unintelligible] California, at this time of the morning, our telephone without cost so that you can call 1-800-700-6834, we are here to help you. I want to congratulate the Lopez family that visited us early this morning here at Mario's Auto Sales, in a Toyota 2001, in the City of [unintelligible] regards [unintelligible] and we continue at Mario's Auto Sales. [For] whatever information[,] the number without cost 1-800-700-6834[,] where we are proud to be Mexicans.

*Big Brand Tire
Announcement #1*

Hello I am Carolina Murillo, I'm here to talk to you about Big Brand Extreme, a collection of rims that fit your style from Big Brand Tire[,] th[ey] w[ill] make you stand out, make your vehicle unique. We have the most recent selection when it comes to rims from A to Z. Big Brand Tire is locally staffed by its owners[. F]or more than 35 years, we have and sell what we advertise[. W]e don't give you a cat for a rabbit here, without commitments to purchase[. W]e have [] the most simple to the most extravagant, hauling accessories[.] Big Brand Tire offers without cost tire alignment check ups regardless of where you bought your tires[.] Big Brand Tire has tire brands like Michelin, Goodyear[,], Pirelli and Cooper. In Big Brand Tire we have factory packages to raise or lower your car at your preference[. Y]ou might visit the new Po[r]terville location, south of Plano and two more locations in Bakersfield, on White Lane and 21st Street[.] Big Brand Tire, where we are always available to serve you in Spanish.

*Big Brand Tire
Announcement #2*

Your friend here Carolina Murillo to say hi[.] I would like to speak to you about Big Brand Tire and its more than 13 locations[. W]e are here to serve you with some of the most well known brands, such as, Michelin, Goodyear[,], Pirelli and Cooper for less[.] Big Brand Tire knows about tires[. W]e now offer tires with nitrogen filling. Tires with nitrogen have larger molecules that reduces [the] loss [of tire] pressure[,] thus you have less risk of suffering damages[. S]tudies have shown that tires filled with nitrogen last longer and are not too expensive[. Y]ou could save more because there's a [lesser] chance to get a flat tire[,] consequently you would save more in gas per mileage[.] Big Brand Tire is opened Saturdays until 5 p.m.[.] You can visit us at our new location in Po[r]terville south of Plano, two more locations in Bakersfield on White Lane and 21st Street[. W]e have and sell what we advertise, we don't give you a cat for a rabbit here, without commitments to purchase[.] Big Brand Tire offers

tire alignment check ups and flat tire repairs at no cost[,] regardless of where you bought your tires[. L]anguage is not a problem, we speak Spanish[. G]reat savings, great service, Big Brand Tire.

Muebleria La Tapatia ("MLT")

From [the top], they want to imitate us, but countrymen, they will never be able to be the same[. A]ttention Farmersville and surrounding areas, prices are on fire, at MLT in Farmersville[. Y]es, you listened correctly[,] the hottest prices are at MLT! Hurry and take advantage of this hot furniture sale[. E]veryone else is melting because they can't [compete] with our factory prices[.] MLT offers you easy credit regardless of whether you have or not. Credit here[! N]o one will be turned away, and with your good credit MLT gives you its interest[. D]on't let people tell you stories, because they may lie to you[. W]e are MLT, the one that gives credit to almost everyone, 514 Farmersville Blvd in Farmersville, phone 474-5537.