

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

In the Matter of)	
)	
LA TREMENDA RADIO MEXICO, INC.)	NAL/Acct. No. MB-200741410116
)	FRN: 0012613808
For Renewal of License for)	Facility ID No. 36185
Station KZUE(AM))	File No. BR-20050707ACE
El Reno, Oklahoma)	

FORFEITURE ORDER

Adopted: June 28, 2011

Released: June 29, 2011

By Chief, Audio Division Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, we issue a monetary forfeiture in the amount of four thousand dollars (\$4,000) to La Tremenda Radio Mexico, Inc. (“Licensee”), licensee of Station KZUE(AM), El Reno, Oklahoma (“Station”), for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (“Act”), by engaging in unauthorized operation of the Station.¹ We also admonish Licensee for willfully violating Section 73.3539 of the Commission’s Rules (“Rules”) by failing to timely file a license renewal application for the Station.²

II. BACKGROUND

2. On February 16, 2007, the Bureau issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Licensee in the amount of seven thousand dollars (\$7,000) for these violations.³ As noted in the NAL, Licensee’s renewal application for the current license term should have been filed by February 1, 2005, four months prior to the June 1, 2005, expiration date, but was not. In fact, Licensee did not file the renewal application until July 7, 2005. Licensee also failed to file for special temporary authority to continue operating the Station after the Station’s license expired. Licensee filed a response to the NAL (“Letter”) on February 28, 2007.

3. In its Letter, Licensee asserts that the proposed forfeiture should be cancelled because: (1) it attempted to timely file the application and believed that the filing had been successfully completed electronically; and (2) paying the forfeiture would present a financial hardship.

III. DISCUSSION

4. The forfeiture amount proposed 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*.⁶ In

¹ 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

² 47 C.F.R. § 73.3539

³ *La Tremenda Radio Mexico, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 3284 (MB 2007). (“NAL”)

⁴ 47 U.S.C. § 503(b).

assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violations 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.⁷

5. As an initial matter, we note that the violation of Section 73.3539 of the Rules is time-barred. Section 503(b)(6) of the Act limits the Commission's ability to issue forfeitures.⁸ When the Commission renews a license after a violation occurs but before issuing a Notice of Apparent Liability to the licensee, as was the case here,⁹ the Commission can only issue a forfeiture for violations occurring within the year prior to the issuance of the Notice.¹⁰ Here, because the Bureau issued the *NAL* on February 16, 2007 (nearly two weeks after the renewal grant), we are barred from issuing a forfeiture to Licensee for violations occurring before February 16, 2006. The late-filed renewal application was filed on July 7, 2005. Therefore, we may not impose a forfeiture for this violation, and we will cancel that portion of the forfeiture concerning Licensee's violation of Section 73.3539 of the Rules. However, the unauthorized operation of the Station continued through January 31, 2007, when the Bureau granted Licensee's license renewal application. Thus, with respect to Licensee's violation of Section 301 of the Act, the *NAL* was issued within the period required by Section 503(b)(6) of the Act.

6. Turning now to Licensee's arguments, Licensee first asserts that the forfeiture should be cancelled because its failure to timely file was inadvertent. Specifically, Licensee states that it thought it had correctly filed the renewal application before the filing deadline, and submits evidence demonstrating that the electronic application was created on January 31, 2005, and validated on May 19, 2005.¹¹ Based on the explanation provided in its Letter and our review of CDBS, it appears that Licensee simply misunderstood our electronic filing procedures and erroneously assumed that validation of the application meant that it had been filed. Therefore, the failure to file the renewal application was due to Licensee's own error.

7. As the Commission has held, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.¹² Moreover, we have specifically

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⁵ 47 C.F.R. § 1.80.

⁶ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ 47 U.S.C. § 503(b)(6) ("No forfeiture penalty shall be determined or imposed against any person...if the violation charged occurred (i) more than 1 year prior to the date of issuance of the required notice or notice of apparent liability; or (ii) prior to the date of commencement of the current term of license, whichever is earlier"). See *Detroit Public Schools*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13688 (MB 2008) (explaining that the earlier date with respect to Section 503(b)(6) is the date that occurred first in time).

⁹ The Station's license renewal was granted on January 31, 2007. See File No. BR-20050707ACE. The *NAL* was issued on February 16, 2007.

¹⁰ See *WDVX(FM), Clinton, Tennessee*, Letter, 26 FCC Rcd 1186 (2011) (cancelling proposed forfeiture where licensee's renewal application was granted after violations occurred but prior to the issuance of an *NAL* and the violations occurred more than one year prior to issuance of the *NAL*).

¹¹ Letter at 1-2.

¹² See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2088 (1992); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*") (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance"); *Standard Communications Corp.*,

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ruled that confusion or difficulties with the Commission's electronic filing system are not grounds for reduction or cancellation of a forfeiture.¹³ Accordingly, we find this argument to be without merit.

8. Licensee next argues that "financially we can not afford this penalty."¹⁴ This is essentially a claim of financial hardship. As stated in the *NAL*,¹⁵ the Commission will not consider reducing or cancelling a forfeiture in response to inability to pay unless Licensee 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 reflect Licensee's current financial status.¹⁶ Here, Licensee did not submit federal tax returns, financial statements or any documentation setting forth its finances in support of its claim. Accordingly, in the absence of sufficient information to support a decision to the contrary, we decline to cancel or reduce the proposed forfeiture on the basis of inability to pay.¹⁷

9. We have considered Licensee's Letter and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully violated Section 73.3539 of the Rules and willfully and repeatedly¹⁸ violated Section 301 of the Act.¹⁹ However, as described above, we will reduce the forfeiture amount to \$4,000.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,²⁰ that La Tremenda Radio Mexico, Inc. SHALL FORFEIT to the United States the sum of four thousand dollars (\$4,000) for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended. La Tremenda Radio Mexico, Inc. is hereby ADMONISHED for its violation of Section 73.3539 of the Commission's Rules.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant

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Memorandum Opinion and Order, 1 FCC Rcd 358, 358 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations").

¹³ See *Muskegon Training and Educational Center*, Forfeiture Order, 23 FCC Rcd 11241, 11242-43 (MB 2008).

¹⁴ Letter at 1.

¹⁵ See *NAL*, 22 FCC Rcd at 3287.

¹⁶ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441 (2004), *modified*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount after review of submitted federal tax returns demonstrated a financial hardship).

¹⁷ See *Colby Community College*, Forfeiture Order, 24 FCC Rcd 3568 (MB 2010) (rejecting licensee's financial hardship argument, finding that licensee failed to provide any documentation in support of an inability to pay claim); *Oberlin College Student Network, Inc.*, Forfeiture Order, 25 FCC Rcd 8240 (MB 2010) (same).

¹⁸ Section 312(f)(2) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2). See also *Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

¹⁹ 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

²⁰ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

to Section 504(a) of the Act.²¹ 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 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).²² Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov and Shannon.Hyatt@fcc.gov. Requests for payment of the full amount of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, D.C. 20554.²³

12. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by First Class and Certified Mail Return Receipt Requested to Mr. & Mrs. Lupe Galvan, La Tremenda Radio Mexico, Inc., 2715 S. Radio Road, El Reno, Oklahoma 73063.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²¹ 47 U.S.C. § 504(a).

²² See 47 C.F.R. § 1.1914.

²³ *Id.*