

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

In the Matter of)	
)	Facility ID No. 13630
Nievezquez Productions, Inc.)	NAL/Acct. No. MB-201141410004
)	FRN: 0007934268
Licensee of Station WPRX(AM))	File No. BR-20101008ABU
Bristol, Connecticut)	

FORFEITURE ORDER

Adopted: September 30, 2011

Released: October 3, 2011

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000) to Nievezquez Productions, Inc. (“Licensee”), licensee of Station WPRX(AM), Bristol, Connecticut (“Station”), for willfully violating Section 73.3539 of the Commission’s Rules (“Rules”) and willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (“Act”) by failing to timely file license renewal applications and engaging in unauthorized operation of the Station.¹

II. BACKGROUND

2. On August 3, 2011, the Media Bureau (“Bureau”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of seven thousand dollars (\$7,000) to Licensee for these violations.² Licensee submitted a letter in response to the NAL (“Response”) on August 11, 2011.

3. As noted in the NAL, the Licensee’s renewal application was due on December 1, 2005, four months prior to the April 1, 2006, license expiration date. According to Commission records, no such application was filed, and the Station’s license expired on April 1, 2006. Consequently, on September 28, 2010, the Bureau wrote to Licensee, indicating that the Station’s license had expired and that: (1) all authority to operate the Station was terminated; and (2) the Station’s call letters had been deleted from the Commission’s data base. Licensee was advised that any operation of the Station was then unauthorized and must cease immediately.³ Upon receipt of the *License Expiration Letter*, on October 8, 2010, Licensee filed a license renewal application for the Station as well as a request for special temporary authority (“STA”) to continue Station operations pending consideration of the untimely filed renewal application.⁴ On August 3, 2011, the Bureau issued an NAL in the amount of \$7,000 for

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

² *Nievezquez Productions, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 11-1339 (MB rel. Aug. 3, 2011) (“NAL”).

³ *Letter to Nievezquez Productions, Inc.*, Ref. 1800-B3KAW (MB Sep. 28, 2010) (“*License Expiration Letter*”).

⁴ See File No. BLSTA-20101008AAX (“STA Request”). The staff granted the STA Request on November 9, 2010, and it was to expire on May 9, 2011. *Letter to Mr. Oscar Nieves*, Ref. 1800B3 (MB Nov. 9, 2010). On April 8,

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apparent violations of Sections 73.3539 of the Rules and 301 of the Act.⁵ In response, Licensee filed the subject Response arguing that these violations were not intentional, and that it is financially unable to pay the proposed forfeiture. Licensee asserts that these reasons warrant a cancellation of the assessed forfeiture.⁶

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁷ Section 1.80 of the Rules,⁸ and the Commission's *Forfeiture Policy Statement*.⁹ In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we 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 such other matters as justice may require.¹⁰

5. Licensee first asserts that these violations were unintentional. Specifically, Licensee argues that the Station's mailing address changed without notice to the Commission, and thus it did not receive a Commission reminder of the renewal application filing deadline.¹¹ However, the Rules specifically provide that licensees are responsible for providing the Commission with their current address.¹² As the Commission has held, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.¹³ Moreover, correspondence reminding a licensee that a renewal deadline is approaching is a mere courtesy and does not in any way change the licensee's burden to file a renewal application before the deadline.¹⁴ "Long-standing Commission precedent . . . states that responsibility for complying with terms of a station's license 'rests solely and exclusively with the licensee.'"¹⁵ Thus, we will not consider this argument further.

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2011, however, Licensee filed a request for extension of the STA, which was dismissed as a result of Bureau action on the renewal application. See File No. BELSTA-20110408AAV.

⁵ In the same Order, the Bureau also reinstated the Station's call sign and granted the license renewal application.

⁶ Response at 1.

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. § 1.80.

⁹ *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).

¹⁰ 47 U.S.C. § 503(b)(2)(E).

¹¹ Response at 1.

¹² See 47 C.F.R. § 1.5.

¹³ See *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.*, 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").

¹⁴ See *Christian Radio Translator Association/Salmon, Inc.*, Forfeiture Order, 24 FCC Rcd 11288, 11289 (MB 2009) (holding that a Licensee's mistaken assumption that it would receive a reminder of the filing date from the Commission did not excuse the failure to file a timely renewal application).

¹⁵ *Escalante City*, Forfeiture Order, 26 FCC Rcd 5961, 5962 (MB 2011); and see *Southern Broadcasting & Investment Co., Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 25 FCC Rcd 13199, 13200 (continued...)

6. Licensee next asserts that that the proposed forfeiture should be reduced or cancelled because it recently emerged from Chapter 11 bankruptcy protection in September 2010.¹⁶ There is precedent for cancelling or reducing a proposed forfeiture in cases where a licensee faced bankruptcy,¹⁷ and “cancellation is generally warranted where the licensee or permittee has relinquished control over its assets and the imposition of a forfeiture ‘would diminish the amount available to [Licensee’s] innocent creditors and would otherwise serve no public interest purpose.’”¹⁸ Here, the violating Licensee still controls the assets of the Station and is no longer in bankruptcy.¹⁹ Accordingly, we give no weight to this argument.

7. Finally, Licensee claims that a payment of \$7,000 forfeiture would cause a “tremendous hardship.”²⁰ The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the party against which the forfeiture is proposed submits: (1) federal tax returns for the most recent three year period; (2) financial statements prepared according to generally accepted accounting principles (GAAP); or (3) some other reliable and objective documentation that accurately reflects the party’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.²¹

8. In general, a licensee’s gross revenues are the best indicator of its ability to pay a forfeiture.²² The Commission has found that the staff’s use of gross revenues is a reasonable and useful yardstick to analyze a company’s financial condition for forfeiture purposes.²³ However, in some cases, other financial indicators (such as net losses) may also be relevant.²⁴ In support of its Request, Licensee submits copies of its 2008, 2009, and 2010 federal income tax returns, specifying gross revenues in the amount of \$179,263, \$130,741, and \$223,384.²⁵ Further, the tax returns indicate losses of \$6,113 and \$54,635 in 2008 and 2009, respectively, and a profit of \$2,000 in 2010. Licensee also submits “Income and Expense Statements” and Form MOR-3 Monthly Operating Reports related to its bankruptcy filing.²⁶

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(MB 2010) (“Licensees are obligated to comply fully with the Rules, including filing a timely renewal application and maintaining in effect the station’s authorization”).

¹⁶ Licensee voluntarily filed a Petition on November 19, 2007, to enter bankruptcy and reorganize under Chapter 11. See *In re Nievesquez Productions*, Bankr. D. Conn. Case No. 07-21662 (2007). Licensee emerged from bankruptcy in September, 2010. Response at 1.

¹⁷ *Adelphia Communications*, Forfeiture Order, 18 FCC Rcd 7652, 7654 (EB 2003); and see, e.g., *Dennis Elam, Trustee for Bakcor Broadcasting, Inc., Debtor*, 11 FCC Rcd 1137 (1996) (forfeiture rescinded after bankruptcy trustee was appointed and the violator was no longer associated with the subject radio stations); *Interstate Savings, Inc. d/b/a ISI Communications*, 12 FCC Rcd 2934 (CCB 1997) (forfeiture rescinded where trustee was appointed in Chapter 7 liquidation, removing violator from operating as a common carrier and from involvement in dissolution or distribution of assets).

¹⁸ *F. Scott Pippen*, Letter, 26 FCC Rcd 5931, 5932 (MB 2011) (quoting *Yvette Gonzales*, Memorandum Opinion and Order, 24 FCC Rcd 5669, 5670 (MB 2010)).

¹⁹ Response at 1.

²⁰ *Id.*

²¹ NAL at ¶ 13.

²² See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

²³ *Id.*

²⁴ *Id.*

²⁵ Response Exhibit A.

²⁶ Response Exhibit B.

While the “Income and Expense Statements” and MOR-3’s alone are insufficient,²⁷ Licensee’s federal income tax returns provide a sufficient basis from which to assess the Station’s claim of financial hardship.

9. In considering claims of financial hardship, we have previously found forfeiture amounts as high as 5 percent of gross revenues to be reasonable,²⁸ and the Enforcement Bureau has found that a forfeiture as high as 7.9 percent of the violator’s gross revenue was not excessive despite claims of financial hardship.²⁹ The proposed forfeiture of \$7,000 amounts to 3.9% of the Station’s average yearly gross revenues.³⁰ We therefore believe that the gross revenues are sufficiently great when compared to the amount of the proposed forfeiture such that the mere fact that Licensee has experienced losses in the past does not demonstrate that it is unable to pay the proposed forfeiture amount.³¹ Accordingly, we believe that a forfeiture in the proposed amount of \$7,000 is appropriate.

10. We have considered Licensee’s Request and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully³² violated Section 73.3539 of the Rules and willfully and repeatedly³³ violated Section 301 of the Act.³⁴ For the reasons set forth above, we find that the proposed forfeiture of seven thousand dollars (\$7,000) is warranted.

IV. ORDERING CLAUSES

11. 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,³⁵ that Nievesquez Productions, Inc. SHALL FORFEIT to the United States the sum of seven thousand dollars (\$7,000) for willfully violating Section 73.3539 of the Commission’s Rules and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended.

²⁷ See *Sumter Baptist Temple Inc.*, Forfeiture Order, 24 FCC Rcd 4789, 4791 (MB 2009) (statement of station’s income and expenditures deemed insufficient documentation); *Best Media, Inc.*, Forfeiture Order, 24 FCC Rcd 4140, 4142-43 (MB 2009) (same).

²⁸ See *CARE Broadcasting.*, Forfeiture Order, 25 FCC Rcd 1411 (MB 2010).

²⁹ See *Coleman Enterprises, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385, 24389 (EB 2000), *recon. denied*, 16 FCC Rcd 10023, 10025 (2001).

³⁰ See Response, Exhibit A and see paragraph 7, *supra* (Station had gross revenues of \$179,263, \$130,741, and \$223,384 in 2008, 2009, and 2010 respectively).

³¹ The Bureau has reduced or cancelled forfeitures in situations when there is a compelling combination of modest revenues, significant losses, and/or evidence of financial difficulty. See *In the Matter of Faith Baptist Church, Inc.*, Forfeiture Order, 26 FCC Rcd 1391, n. 19 (MB 2011). We decline to reduce the forfeiture on these grounds as Licensee has healthy revenues, has already emerged from bankruptcy, and was profitable in 2010.

³² 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. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California*, 6 FCC Rcd at 4387-88.

³³ 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).

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

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

12. 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 to Section 504(a) of the Act.³⁶ 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).³⁷ Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov and Joe.Newberg@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, DC 20554.³⁸

13. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested, to Mr. P. Oscar Nieves, Nievezquez Productions, Inc., 321 Ellis St., New Britain, CT 06051.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

³⁶ 47 U.S.C. § 504(a).

³⁷ See 47 C.F.R. § 1.1914.

³⁸ *Id.*