

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

In the Matter of)
) File No.: EB-10-SJ-0054
A Radio Company, Inc.)
Licensee of Station WEGA) NAL/Acct. No.: 201132680002
Vega Baja, PR 00694)
Facility ID # 69853) FRN: 0010555654
)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 12, 2011

Released: May 12, 2011

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that A Radio Company, Inc. (“A Radio”), licensee of AM radio Station WEGA in Vega Baja, Puerto Rico, apparently willfully and repeatedly violated an Enforcement Bureau (“Bureau”) order by failing to comply with the terms of the *Order and Consent Decree* entered into between the Bureau and A Radio.¹ Based on our review of the facts and circumstances of this case, we conclude that A Radio is apparently liable for a forfeiture in the amount of twenty-five thousand dollars (\$25,000).²

II. BACKGROUND

2. On May 12, 2008, the Bureau adopted an *Order and Consent Decree*³ that terminated a Bureau investigation of possible violations by A Radio of sections 73.49, 73.1350(a), and 73.3526 of the Commission’s rules (“Rules”)⁴ regarding antenna tower fencing, public inspection file requirements, and operating with an unauthorized antenna pattern. Among other terms in the *Order and Consent Decree*, A Radio agreed to make a voluntary contribution to the U.S. Treasury in the amount of eight thousand dollars (\$8,000) by June 14, 2008.⁵ A Radio also agreed to submit a Compliance Report certifying compliance with all terms of the Consent Decree by May 14, 2010.⁶

3. In response to a letter of inquiry⁷ issued by the Bureau’s San Juan Office on April 16,

¹ *A Radio Company, Inc.*, Order and Consent Decree, 23 FCC Rcd 7337 (Enf. Bur. 2008) (“*Order and Consent Decree*”).

² The actions taken today do not prejudice any enforcement actions we may take for other violations discovered while investigating A Radio’s failure to comply with the terms of the *Order and Consent Decree*.

³ See note 1, *supra*.

⁴ 47 C.F.R. §§ 73.49, 73.1350(a), 73.3526.

⁵ *Order and Consent Decree* at 7341.

⁶ *Id.*

⁷ Letter from William Berry, Resident Agent, San Juan Office, to A Radio Company, Inc. (April 16, 2010) (“LOI”).

2010, A Radio admitted that it was required to make an \$8,000 voluntary contribution pursuant to the terms of the *Order and Consent Decree* and stated that the “original check for \$8,000 was not cleared by Western Bank because of insufficient funds.”⁸ According to the Commission’s records, as of May 10, 2011, A Radio has not submitted its \$8,000 voluntary contribution to the U.S. Treasury. Similarly, as of May 10, 2011, A Radio has not submitted its Compliance Report.

III. DISCUSSION

4. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. 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.⁹ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both section 312 and 503(b) of the Act¹⁰ and the Commission has so interpreted the term in the section 503(b) context.¹¹ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹² The term “repeated” means the commission or omission of such act more than once or for more than one day.¹³

5. Under the terms of the negotiated *Order and Consent Decree*, A Radio agreed to make a voluntary contribution in the amount of \$8,000 to the U.S. Treasury by June 14, 2008 and submit a Compliance Report by May 14, 2010. As of May 10, 2011, A Radio has not submitted payment of the voluntary contribution or its Compliance Report. Based on the facts and circumstances described above, we find that A Radio apparently willfully and repeatedly violated a Bureau order by failing to comply with the terms of the *Order and Consent Decree* entered into between the Bureau and A Radio and issued pursuant to sections 4(i) and 503(b) of the Act.¹⁴

6. The Commission’s *Forfeiture Policy Statement* and section 1.80 of the Rules do not specify a base forfeiture amount for failing to comply with a Commission order.¹⁵ The Commission has stated,

⁸ Letter from Gerardo A. Angulo, President/Owner, to William Berry, Resident Agent, San Juan Office at 1 (June 2, 2010) (“*LOI Response*”).

⁹ 47 U.S.C. § 312(f)(1).

¹⁰ H.R. Conf. Rep. No. 97-765, at 51 (1982) (“This provision [inserted in section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., section 503) As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission’s application of those terms”).

¹¹ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California Broadcasting Co.*”).

¹² See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) (“*Callais Cablevision, Inc.*”) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹³ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

¹⁴ 47 U.S.C. §§ 154(i), 503(b).

¹⁵ *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) (“*Forfeiture Policy Statement*”), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

however that the “omission of a specific rule violation from the list [establishing base forfeiture amounts] should not signal that the Commission considers any unlisted violation as nonexistent or unimportant. The Commission expects, and it is each licensee’s obligation, to know and comply with all of the Commission’s rules.”¹⁶ Thus, the Commission retains its discretion to issue forfeitures on a case-by-case basis,¹⁷ irrespective of whether it has established a corresponding base forfeiture amount. In assessing the monetary forfeiture amount, then, we must take into account the statutory factors set forth in section 503(b)(2)(E) of the Act, which include 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 other such matters as justice may require.¹⁸ The *Order and Consent Decree* terminated an enforcement proceeding which originated with a \$15,000 Notice of Apparent Liability for Forfeiture.¹⁹ The Commission has stated that “a consent decree violation, like misrepresentation, is particularly serious. The whole premise of a consent decree is that enforcement action is unnecessary due, in substantial part, to a promise by the subject of the consent decree to take the enumerated steps to ensure future compliance. Where, as here, it appears that a regulated entity violated a consent decree, we believe a substantial proposed forfeiture is warranted.”²⁰ Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we therefore conclude that A Radio is apparently liable for a forfeiture in the amount of \$25,000.

IV. ORDERING CLAUSES

7. 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 Rules, A Radio Company, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for violating the terms of a Bureau order adopted pursuant to section 4(i) and 503(b) of the Act.²¹

8. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Rules within thirty (30) days of the release date of this *NAL*, A Radio Company, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN 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

¹⁶ *Forfeiture Policy Statement*, 12 FCC Rcd at 17099 ¶ 22.

¹⁷ *Id.*

¹⁸ 47 U.S.C. § 503(b)(2)(E).

¹⁹ *A Radio Company, Inc.*, Notice of Apparent Liability for Forfeiture, *NAL*/Acct. No. 200632680001 (Enf. Bur., San Juan Office, released October 25, 2005).

²⁰ *SBC Communications, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 16 FCC Rcd 19091, 19125 (2001).

²¹ 47 U.S.C. §§ 154(i), 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80.

sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²² If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. A Radio shall also send electronic notification to SCR-Response@fcc.gov on the date said payment is made.

10. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Rules. The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, San Juan, Room 762, Hato Rey, PR, 00918 and must include the NAL/Acct. No. referenced in the caption. A Radio shall also email an electronic copy to SCR-Response@fcc.gov.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner 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 petitioner'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.

12. **IT IS FURTHER ORDERED** that a copy of this *NAL* shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to A Radio Company, Inc., at P.O. Box 1488, Vega Baja, PR 00694.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief
Enforcement Bureau

²² See 47 C.F.R. § 1.1914.