

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

In the Matter of)	
)	
Iglesia Cristiana Ebenezer, Inc.)	File No.: EB-FIELDSCR-13-00008542 ¹
)	NAL/Acct. No.: 201432500001
Licensee of Translator Station K295BF,)	FRN: 0013743158
Greenville, Texas)	Facility ID No.: 156869
)	

NOTICE OF APPARENT LIABILITY FOR FOFEITURE

Adopted: October 24, 2013

Released: October 25, 2013

By the District Director, Dallas Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Iglesia Cristiana Ebenezer, Inc. (Iglesia), licensee of FM Translator Station K295BF, in Greenville, Texas (Station K295BF), apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act), and Section 74.1251(a) of the Commission's rules (Rules),² by operating Station K295BF at an unauthorized location. We conclude that Iglesia is apparently liable for a forfeiture in the amount of eight thousand dollars (\$8,000).

II. BACKGROUND

2. Iglesia's FM Translator Station K295BF is authorized to rebroadcast the signal of low power FM Station KYLP-LP.³ Further, in 2011, Station K295BF was authorized to operate at coordinates 33-00-21.9 N 096-17-32.9 W, in Royse City, Texas. On June 15, 2011, in response to a complaint that Station K295BF was operating at an unauthorized location, agents from the Enforcement Bureau's Dallas Office (Dallas Office) observed that Station K295BF was operating at coordinates 32-58-07.4 N 096-20-30.6 W (in Royse City), which was at variance with its authorization. On the same day, the agents informed Iglesia's owner of the discrepancy and directed the licensee to cease operating Station K295BF at the unauthorized location.

3. On June 24, 2011, Iglesia submitted an FCC Form 349 application (Application) to obtain authority to change its community of license from Greenville to Royse City, Texas, and to move Station K295BF to a new location (i.e., at coordinates 32-58-07.4 N 096-20-30.6 W, in Royse City).⁴ The FCC's Media Bureau accepted the Application for filing on June 27, 2011. In addition, on July 8, 2011, Iglesia filed a request for a Special Temporary Authorization (STA) with the Media Bureau to obtain authority to move Station K295BF to the new location.⁵ On July 11, 2011, the Media Bureau, however, denied Iglesia's

¹ File No. EB-FIELDSCR-13-00008542 incorporates the contents of File No. EB-11-DL-0053, the previous file number for this case.

² 47 U.S.C. § 301; 47 C.F.R. § 74.1251(a).

³ See License File No. BLFT-20070423ABX.

⁴ See License File No. BPFT-20110624ACD.

⁵ See License File No. BSTA-20110708AAA.

STA request because the proposed STA operation would result in a substantial extension of its coverage area.⁶ Despite denial of its STA, Iglesia continued to operate Station K295BF at the unauthorized location. During follow up inspections on March 7 and 19, 2012, an agent from the Dallas Office confirmed that Station K295BF was still operating at the unauthorized location. Several months later, during a subsequent investigation, the agents discovered that Station K295BF apparently returned to its original, authorized location sometime in November 2012. However, for approximately 17 months, while Iglesia's Application was pending, Iglesia apparently continued to operate the transmitter at the unauthorized location.

4. On June 17, 2013, the Media Bureau granted Iglesia's Application to move its transmitter to the new location. In September 2013, the Dallas Office confirmed that Station K295BF was operating its transmitter at the new (authorized) location.

III. DISCUSSION

5. 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.⁷ 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.⁸ 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,⁹ and the Commission has so interpreted the term in the Section 503(b) context.¹⁰ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹¹ The term "repeated" means the commission or omission of such act more than once or for more than one day.¹²

⁶ See Letter from Charles N. Miller, Engineer, Audio Division, Media Bureau, to Dan J. Alpert, Counsel for Iglesia Cristiana Ebenezer, Inc. (July 11, 2011) (on file in EB-FIELDSCR-13-00008542). To remedy the expansion in coverage area, the proposed STA operation power would need to be significantly reduced, which would eliminate coverage in the current community of license.

⁷ 47 U.S.C. § 503(b).

⁸ 47 U.S.C. § 312(f)(1).

⁹ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 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").

¹⁰ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

¹¹ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator's repeated signal leakage).

¹² Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

A. Operation at an Unauthorized Location

6. The evidence in this case establishes that Iglesia violated Section 301 of the Act and Section 74.1251(a) of the Rules. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States, except under and in accordance with the Act and with a license granted under the provisions of the Act.¹³ In addition, Section 74.1251(a) of the Rules states that “[n]o change, either mechanical or electrical . . . may be made in FM translator or booster apparatus which has been certificated by the Commission without prior authority of the Commission.”¹⁴

7. Pursuant to Iglesia’s license as of 2011, FM Translator Station K295BF was authorized to operate at coordinates 33-00-21.9 N 096-17-32.9 W in Royse City, Texas. The record evidence, however, shows that Iglesia was engaged in unauthorized operation by operating Station K295BF at a different location (i.e., at coordinates 32-58-07.4 N 096-20-30.6 W, in Royse City). The Dallas Office agents confirmed this fact on June 15, 2011, and specifically directed Iglesia to cease operation from the unauthorized location, which Iglesia did not do. Although Iglesia later submitted a license modification Application (i.e., by filing an FCC Form 349) to change its community of license and to obtain authorization to operate the transmitter at the new location, it continued to operate Station K295BF at the unauthorized location before receiving Commission approval. A licensee simply cannot operate in conformity with its license modification application based on the assumption that the application will later be granted.¹⁵ Until such modification application has been granted, a licensee is expected to operate in strict conformity with its current license authorization, unless it has been granted special temporary authority in the interim.¹⁶ Here, although Iglesia applied for an STA on July 8, 2011, to permit operations at a new location while its Application remained pending, the FCC’s Media Bureau denied the STA application on July 11, 2011, because the proposed STA operation would result in a substantial extension of Station K295BF’s coverage area. In spite of the denial of its request for an STA and the pendency of its Application, Iglesia continued to operate Station K295BF at the unauthorized location.¹⁷ Based on the evidence before us, we find that Iglesia apparently willfully and repeatedly violated Section 301 of the Act and Section 74.1251(a) of the Rules by operating Station K295BF at an unauthorized location.¹⁸

B. Proposed Forfeiture

8. Pursuant to the Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for construction or operation at an unauthorized location is \$4,000.¹⁹ In assessing the monetary forfeiture amount, we must also 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

¹³ 47 U.S.C. § 301.

¹⁴ 47 C.F.R. § 74.1251(a).

¹⁵ See *Ace of Hearts Disc Jockey Service, Inc.*, Memorandum Opinion and Order, 28 FCC Rcd 1095 (Enf. Bur. 2013).

¹⁶ See 47 U.S.C. § 301. See also *J. Thomas Development of NM, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 10859 (Media Bur. 2012) (finding that licensee’s operations after license expired and without STA apparently violated Section 301).

¹⁷ As the record reflects, the Dallas Office confirmed on March 7 and 9, 2012—more than eight months after FCC agents informed Iglesia of the violation and ordered it to cease operating at the unauthorized location—that Station K295BF was still operating at the unauthorized location.

¹⁸ See *Bay Broadcasting Corporation*, 15 FCC Rcd 13613 (Enf. Bur. 2000) (forfeiture issued for operating a translator station at unauthorized location in violation of Section 74.1251).

¹⁹ *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*), *recons. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

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.²⁰ In doing so, we find that the facts and circumstances of this case justify a \$4,000 upward adjustment of the base forfeiture amount to take into account Iglesia's deliberate disregard for the Commission's authority on two occasions: first, by continuing to operate Station K295BF at an unauthorized location even after it was specifically directed by FCC agents to cease the unauthorized operation; and, second, by continuing to operate the Station at an unauthorized location despite denial of its STA request and also before its Application was granted.²¹ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Iglesia is apparently liable for a total forfeiture in the amount of \$8,000 for operation at an unauthorized location.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Commission's rules, Iglesia Cristiana Ebenezer, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of eight thousand dollars (\$8,000) for violations of Section 301 of the Act and Section 74.1251(a) of the Rules.²²

10. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Iglesia Cristiana Ebenezer, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Iglesia Cristiana Ebenezer, Inc. shall also send electronic notification on the date said payment is made to SCR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²³ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The

²⁰ 47 U.S.C. § 503(b)(2)(E).

²¹ See, e.g., *Nounone Lubin*, Forfeiture Order, 26 FCC Rcd 7758 (Enf. Bur. 2011), *aff'g*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 12654 (Enf. Bur. 2010) (proposing upward adjustment of the base forfeiture amount because unlicensed operator previously was informed of the violation).

²² 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 74.1251(a).

²³ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

12. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁴ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

13. 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 1.16 and 1.80(f)(3) of the Rules.²⁵ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Dallas Office, 9330 LBJ Freeway, Suite 1170, Dallas, Texas, 75243, and include the NAL/Acct. No. referenced in the caption. Iglesia Cristiana Ebenezer, Inc. also shall e-mail the written response to SCR-Response@fcc.gov.

14. 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 principles (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.

15. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and First Class Mail to Iglesia Cristiana Ebenezer, Inc. at 3207 Forest Lane, Garland, Texas 75042.

FEDERAL COMMUNICATIONS COMMISSION

James D. Wells
District Director
Dallas Office
South Central Region
Enforcement Bureau

²⁴ See 47 C.F.R. § 1.1914.

²⁵ 47 C.F.R. §§ 1.16, 1.80(f)(3).