

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

In re Applications of)	
)	
RADIO FIESTA CORPORATION)	NAL/Acct. No. MB-201441410034
)	FRN: 0009670399
For Renewal of License for)	Facility ID No. 54572
Station KAZA(AM))	File Nos. BR-20051123AGQ and BR-
Gilroy, California)	20130903AAY
)	
and)	
)	
For Assignment of License for Station)	File No. BAL- 20141003AAR
KAZA(AM), Gilroy, California from Radio Fiesta)	
Corporation, Assignor to Intelli, LLC, Assignee)	
)	

**MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: November 18, 2014

Released: November 18, 2014

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (“Bureau”) has before it the captioned applications filed by Radio Fiesta Corporation (“Radio Fiesta” or “Licensee”) for renewal of license for Station KAZA(AM), Gilroy, California (“Station”) in 2005 and 2013 (“2005 Renewal Application” and “2013 Renewal Application,” and collectively, the “Renewal Applications”). Also, before us is an application for consent to assignment of the Station’s license (“Assignment Application”) from Radio Fiesta to Intelli, LLC (“Intelli”). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (“NAL”),¹ we find that Radio Fiesta has apparently willfully and repeatedly violated Section 73.3539 of the Rules² by failing to timely file its license renewal applications and Section 73.3526 of the Rules³ by failing to retain all required documentation in the Station’s public inspection file. Based upon our review of the facts and circumstances before us, we conclude that Radio Fiesta is apparently liable for a monetary forfeiture in the amount of eighteen thousand dollars (\$18,000).

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed “not later than the first day of the fourth full calendar month prior to the

¹ This NAL is issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended (“Act”), and Section 1.80 of the Commission’s rules (“Rules”). See 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. § 1.80. The Bureau has delegated authority to issue the NAL under Section 0.283 of the Rules. See 47 C.F.R. § 0.283.

² See 47 C.F.R. § 73.3539.

³ See 47 C.F.R. § 73.3526.

expiration date of the license sought to be renewed.”⁴ An application for renewal of the Station’s license should have been filed four months prior to the Station’s expiration date. For the 2005 license renewal period, an application for renewal of license should have been filed by August 1, 2005, four months prior to the Station’s December 1, 2005, expiration date, but was not filed until November 23, 2005, seven days before the Station’s expiration date.⁵ For the 2013 license renewal period, an application for renewal of license should have been filed by August 1, 2013, four months prior to the Station’s December 1, 2013, expiration date, but was not filed until September 3, 2013, more than 30 days after the filing date and less than three months before the Station’s expiration date. In the 2005 Renewal Application, Radio Fiesta reported that the Station’s General Manager, who was responsible for compliance with the Station’s regulatory obligations, “had passed away in July of 2005.”⁶ Licensee further noted that the new Station manager was unfamiliar “with certain of the filing and recordkeeping requirements applicable to the Station”⁷ but had recently hired communications counsel for assistance. With respect to the 2013 Renewal Application, the staff spoke several times with the Licensee’s counsel in August of 2013 to remind the Licensee to file its 2013 Renewal Application. The Licensee nevertheless failed to acknowledge or provide an explanation for this late filing.

3. Additionally, Section 73.3526 of the Rules requires a broadcast licensee to maintain a public inspection file containing specific types of information related to station operations. The purpose of this requirement is to provide the public with timely information about the station at regular intervals throughout the license period.⁸ Among the materials required for inclusion in the file are the station’s quarterly issues/programs lists, which must be retained until final Commission action on the station’s next license renewal application.⁹

4. Section III, Item 3 of the license renewal application form, FCC Form 303-S, requests that the licensee certify that the documentation required by Section 73.3526 has been placed in the station’s public inspection file at the appropriate times. In the 2005 Renewal Application Radio Fiesta answered “No” to that certification and attached an Exhibit stating, in pertinent part:

[A]lthough the Station broadcasts a considerable quantity of local news and public service programming . . . quarterly issues/programs reports from 1999 through 2005 were not found in the public file at the time the Licensee undertook its pre-renewal review of the file even though the Station believes that reports were prepared. During the time in question, no party has requested to see the public inspection file. The Station has been made aware of the need to ensure that the reports are placed in the Station’s public inspection file in the future.

As noted, these oversights were primarily due to the fact that the long-time General Manager of the Station passed away after a lengthy illness and the persons currently running the Station are new to broadcasting. The omissions have been corrected and it is anticipated that they will not occur again in the future as the Station has secured specialized FCC counsel.¹⁰

⁴ 47 C.F.R. § 73.3539(a).

⁵ See 47 C.F.R. §§ 73.1020, 73.3539(a).

⁶ 2005 Renewal Application, Exhibit 12.

⁷ *Id.*

⁸ Cf. *Letter to Kathleen N. Benfield from Linda B. Blair, Chief, Audio Services Division*, 13 FCC Rcd 4102 (MMB 1997) (citing *License Renewal Applications of Certain Commercial Radio Stations*, Memorandum Opinion and Order, 8 FCC Rcd 6400 (MMB 1993)).

⁹ See 47 C.F.R. § 73.3526(e)(8).

¹⁰ 2005 Renewal Application, Exhibit 12. Also in the 2005 Renewal Application Radio Fiesta acknowledged not filing Biennial Ownership Reports for 2001 and 2003. Additionally, in the 2013 Renewal Application, it checked

III. DISCUSSION

5. *Proposed Forfeiture. Section 73.3539 Violation.* In light of the filing dates of the Renewal Applications, it is beyond dispute that the 2005 Renewal Application and 2013 Renewal Application were not timely filed. Furthermore, Licensee failed to provide an adequate explanation for the late filings. We will not excuse the violations, because licensees are responsible for the timely submission of required forms, and untimely renewal applications disrupt the orderly processing of renewal applications orchestrated by the staggering of license renewal terms in Section 73.1020 of the Rules.¹¹

6. *Section 73.3526 Violation.* As Licensee has acknowledged, during the previous license renewal term the Station's public inspection file did not contain many of the items required to be retained in the file by Section 73.3526 of the Rules. In particular, Licensee failed to place in the Station's public file issues and programs lists for a six-year time period, and as such the public file was not in compliance with Section 73.3526(e)(8). Additionally, in this regard, where lapses occur in maintaining the public file, neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.¹²

7. Under Section 503(b)(1)(B) of the Act, a person who is found 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.¹³ 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.¹⁴ 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,¹⁵ and the Commission has so interpreted the term in the Section 503(b) context.¹⁶ Section 312(f)(2) 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."¹⁷

8. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(8) of the Rules establish a base forfeiture amount of \$3,000 for failure to file a required form and of \$10,000 for violation of Section 73.3526.¹⁸ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including

"No" for compliance with the Local Public File Rule, and noted in an exhibit that the Station had failed to file certain Biennial Ownership reports, but was in the process of filing the missing reports. According to Commission records, these Biennial Ownership Reports have since been filed.

¹¹ 47 C.F.R. § 73.1020.

¹² See *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709 (MMB 1999) (citing *Gaffney Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, Notice of Apparent Liability, 33 FCC 706 (1962)); *Surrey Front Range Limited Partnership*, Notice of Apparent Liability, 7 FCC Rcd 6361 (FOB 1992).

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

¹⁴ 47 U.S.C. § 312(f)(1).

¹⁵ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁶ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹⁷ 47 U.S.C. § 312(f)(2).

¹⁸ See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) ("*Forfeiture Policy Statement*"), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(8), note to paragraph (b)(8), Section I.

“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.”¹⁹

9. In this case, the Licensee failed to timely file the Renewal Applications, although it filed the applications prior to the Station’s license expiration dates. Also, although it admitted to the public file rule violations, it did so only in the context of the question contained in the captioned license renewal applications that compelled such disclosure. Moreover, the public file rule violations were extensive, occurring over a six-year period and involving 24 missing issues/programs lists. Considering the record as a whole, we believe that a forfeiture of \$3,000 for each late renewal application, and \$12,000 for the public file violations, is appropriate in this case. Accordingly, we find that the Licensee is apparently liable for a forfeiture in the total amount of \$18,000.

10. *License Renewal Applications and Assignment Application.* In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act.²⁰ That section provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.²¹ If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”²²

11. We find that Licensee’s apparent violations of Sections 73.3539 and 73.3526 of the Rules do not constitute “serious violations” warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.²³ Further, we find that the Station served the public interest, convenience, and necessity during the subject license terms.

12. In evaluating an application for assignment of license the Commission’s decision is governed by Section 310(d) of the Act.²⁴ That Section requires the Commission to make a determination whether the proposed transfer or assignment of a broadcast license would be in the public interest. We find that nothing in the record creates a substantial or material question of fact regarding whether either Radio Fiesta or Intelli possesses the basic qualifications to be a Commission licensee. Based on the record before us, we further find that grant of the Assignment Application serves the public interest, convenience, and necessity.

¹⁹ 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(8).

²⁰ 47 U.S.C. § 309(k).

²¹ 47 U.S.C. § 309(k)(1).

²² 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²³ For example, we do not find here that Licensee's Station operation "was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." *See Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198 (1971). Nor do we find on the record here that "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the Station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Id.* at 200. *See also Center for Study and Application of Black Economic Development*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educational Broadcasting Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

²⁴ 47 U.S.C. § 309(d).

13. Accordingly, pursuant to Sections 309(k)(2) and 309(d) of the Act, we will concurrently grant the Renewal Applications and Assignment Application by a separate action upon the conclusion of this forfeiture proceeding, if there are no issues other than the apparent violations that would preclude grant of the applications. In the event there is an issue that would preclude grant of either Renewal Application or Assignment Application, the affected application will remain pending.

IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that Radio Fiesta Corporation is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of eighteen thousand dollars (\$18,000) for its apparent willful and repeated violations of Sections 73.3539 and 73.3526 of the Commission's Rules.

15. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release date of this *NAL*, Radio Fiesta Corporation, 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 proposed forfeiture must be made by a check or similar instrument, wire transfer or credit card and include the Account Number and FRN referenced in the caption above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account Number in block number 23A (callsign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Licensee will also send electronic notification on the date said payment is made to Penelope Dade at Penelope.Dade@FCC.GOV and Kim Varner at Kim.Varner@FCC.GOV. Below are additional instructions that should be followed based on the form of payment selected:

- 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 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.

17. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington DC 20554, ATTN: Peter H. Doyle, Chief, Audio Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. referenced above.

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. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, DC 20554.²⁵

20. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Radio Fiesta Corporation, c/o SIDHU, 8320 Flanders Drive, No. 138, San Diego, CA 92126 and to its counsel, Miles S. Mason, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, N.W., Washington, DC 20037, and to Intelli, LLC, 1982 Senter Road, San Jose, CA 95112 and to its counsel, Dan J. Alpert, Esq., The Law Office of Dan J. Alpert, 2120 N. 21st Road, Arlington, VA 22201.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²⁵ See 47 C.F.R. § 1.1914.