

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

In the Matter of	)	
	)	
Onda Mexicana Radio Group, Inc.	)	File No.: EB-FIELDSCR-12-00004836
	)	NAL/Acct. No.: 201432700004
Licensee of AM station WWFL, Clermont, FL	)	Facility ID No.: 33215

**MEMORANDUM OPINION AND ORDER**

**Adopted: January 6, 2015**

**Released: January 6, 2015**

By the Deputy Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. We grant in part and deny in part a request by Onda Mexicana Radio Group, Inc. (Onda Mexicana) seeking reconsideration of an \$8,000 penalty issued against it by the Enforcement Bureau (Bureau) for failing to fully respond to a Bureau-issued Notice of Violation (*NOV*). Onda Mexicana requests reduction or cancellation of the penalty based on its purported good faith or voluntary disclosure of the violations, inability to pay the penalty, and history of compliance with the Commission's rules. We reviewed Onda Mexicana's request and decline to reduce or cancel the forfeiture based on its good faith/voluntary disclosure or inability to pay claims. However, we concur that Onda Mexicana has not previously received a written violation notice from the Commission and reduce the penalty to \$6,400 based on its history of compliance.

2. Specifically, in this Memorandum Opinion and Order, issued pursuant to Section 405 of the Communications Act of 1934, as amended (Act),<sup>1</sup> and Section 1.106 of the Commission's rules (Rules),<sup>2</sup> we grant in part and deny in part the request filed by Onda Mexicana<sup>3</sup> seeking reconsideration of the *Forfeiture Order* against it for willfully and repeatedly violating Section 1.89(b) of the Rules.<sup>4</sup>

**II. BACKGROUND**

3. Onda Mexicana asserts that "[o]n or about February 1, 2013 detailed information [in response to the *NOV*] was remitted by USPO Priority Mail to the Tampa field office, but for whatever reason, did not reach the Tampa Field office."<sup>5</sup> Onda Mexicana also states that it corrected the violations

<sup>1</sup> 47 U.S.C. § 405.

<sup>2</sup> 47 C.F.R. § 1.106.

<sup>3</sup> See Letter from Edward A. Maldonado, Esq., Counsel for Onda Mexicana Radio Group, Inc., to Federal Communications Commission (Feb. 11, 2014) (on file in EB-FIELDSCR-12-00004836) (Letter). The Letter was submitted in response to a Notice of Apparent Liability for Forfeiture and Order issued by the Bureau proposing an \$8,000 penalty for Onda Mexicana's apparent failure to respond to the *NOV*. See *Onda Mexicana Radio Group, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 29 FCC Rcd 527 (Enf. Bur. 2014) (*NAL*); *Onda Mexicana Group, Inc.*, Notice of Violation, V201332700003 (Oct. 22, 2012) (on file in EB-FIELDSCR-12-00004836) (*NOV*). The Bureau misplaced the Letter and erroneously issued a no-response Forfeiture Order against Onda Mexicana on May 7, 2014. See *Onda Mexicana Radio Group, Inc.*, Forfeiture Order, 29 FCC Rcd 4896 (Enf. Bur. 2014) (*Forfeiture Order*). Therefore, we are treating the Letter as a timely filed petition for reconsideration of the *Forfeiture Order*. See 47 C.F.R. § 1.106.

<sup>4</sup> 47 C.F.R. § 1.89(b)

<sup>5</sup> Letter at 3.

noted in the *NOV* and requests reduction of the forfeiture because of its purported good faith or voluntary disclosure of the violations as well as its inability to pay.<sup>6</sup> In addition, Onda Mexicana requests a forfeiture reduction in light of its history of compliance with the Rules.<sup>7</sup>

### III. DISCUSSION

4. Petitions for reconsideration are granted only in limited circumstances. Reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in the underlying order, or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.<sup>8</sup> A petition for reconsideration based on facts or arguments not previously presented may be granted, however, if consideration of the facts or arguments relied on is required in the public interest.<sup>9</sup>

5. Onda Mexicana asserts it submitted a full and complete *NOV* response to the Bureau's Tampa Office on or about February 1, 2013, and has since come into full compliance with the Rules.<sup>10</sup> However, the Bureau's Tampa Office has no record of receiving a full *NOV* response from Onda Mexicana on February 1, 2013 or any other date.<sup>11</sup> In fact, Onda Mexicana requested a 30-day extension in which to respond to the *NOV* on March 11, 2013, over a month after it asserts it sent its *NOV* response.<sup>12</sup> But even if Onda Mexicana submitted a complete response to the *NOV* on February 1, 2013, the response would have been untimely. Onda Mexicana originally was required to respond to the *NOV* by November 1, 2012.<sup>13</sup> Even after receiving an additional extension of time, Onda Mexicana failed to file its *NOV* response.<sup>14</sup> While coming into full compliance is commendable, we note that corrective action taken to come into compliance with the Rules is expected, and such corrective action does not nullify or mitigate prior violations, associated forfeiture liability, or Onda Mexicana's obligation to submit a complete *NOV* response.<sup>15</sup> Thus, we find no grounds to reduce or cancel the forfeiture based on these arguments.

6. Onda Mexicana also requests cancellation or reduction of the forfeiture based on its "[g]ood faith or voluntary disclosure" of the violations.<sup>16</sup> However, Onda Mexicana does not provide any support for this claim and, in fact, did not disclose the underlying violations to the Bureau prior to the

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<sup>6</sup> *Id.* at 3–4.

<sup>7</sup> *Id.* at 4.

<sup>8</sup> See 47 C.F.R. § 1.106(c)(1); *EZ Sacramento, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 18257, 18257, para. 2 (Enf. Bur. 2000) (citing *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966)); see also *Ely Radio, LLC*, Memorandum Opinion and Order, 27 FCC Rcd 7608, 7610, para. 6 (Enf. Bur. 2012) (providing standard of review for petitions for reconsideration).

<sup>9</sup> See 47 C.F.R. § 1.106(c)(2); *L.R. Radio Grp.*, Memorandum Opinion and Order, 29 FCC Rcd 455, 456, para. 3 (Enf. Bur. 2014).

<sup>10</sup> Letter at 3–4.

<sup>11</sup> *Forfeiture Order*, 29 FCC Rcd at 4896, para. 2; *NAL*, 29 FCC Rcd at 527–28, paras. 2–4.

<sup>12</sup> *NAL*, 29 FCC Rcd at 528, para. 4 (citing Letter from Oscar Pineda, Owner, Onda Mexicana Radio Group, Inc., to Ralph Barlow, District Director, Tampa Office (Mar. 11, 2013) (on file in EB-FIELDSCR-12-00004836)).

<sup>13</sup> *Id.* at 527, para. 2.

<sup>14</sup> *Id.* at 527, para. 3.

<sup>15</sup> See, e.g., *Mattoon Broad. Co.*, Forfeiture Order, 29 FCC Rcd 2925 (Enf. Bur. 2014); *Catholic Radio Network of Loveland, Inc.*, Forfeiture Order, 29 FCC Rcd 121 (Enf. Bur. 2014); *Argos Net, Inc.*, Forfeiture Order, 28 FCC Rcd 1126 (Enf. Bur. 2013).

<sup>16</sup> Letter at 4.

inspection of its station. In addition, Onda Mexicana requests cancellation or reduction of the forfeiture based on a purported inability to pay. Generally, when faced with claims alleging an inability to pay, the Commission has found that “a licensee’s gross revenues are the best indicator of its ability to pay a forfeiture.”<sup>17</sup> Based on the financial information provided by Onda Mexicana, we find insufficient basis to reduce or cancel the forfeiture on these grounds.<sup>18</sup>

7. Finally, Onda Mexicana requests reduction of the proposed forfeiture based on its history of compliance with the Rules.<sup>19</sup> We have reviewed our records and concur that Onda Mexicana has not been previously cited with a violation of the Rules. Accordingly, we find that consideration of Onda Mexicana’s request is in the public interest and reduce the forfeiture imposed to six thousand four hundred dollars (\$6,400) based on Onda Mexicana’s history of compliance.<sup>20</sup>

#### IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED**, pursuant to Section 405 of the Act and Section 1.106 of the Rules,<sup>21</sup> that the request for reconsideration filed by Onda Mexicana Radio Group, Inc. **IS GRANTED IN PART AND DENIED IN PART.**

9. **IT IS ALSO ORDERED** that, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311, and 1.80(f)(4) of the Rules, Onda Mexicana Radio Group, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of six thousand four hundred dollars (\$6,400) for violation of Section 1.89(b) of the Rules.<sup>22</sup>

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Memorandum Opinion and Order.<sup>23</sup> If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.<sup>24</sup> Onda Mexicana Radio Group, Inc. shall send electronic notification of payment to SCR-Response@fcc.gov on the date said payment is made.

11. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>25</sup> When completing the

<sup>17</sup> *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, 17106, para. 43 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (citing *PJB Commc’ns*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089, para 8 (1992)). See *Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator’s gross revenues); *Hoosier Broad. Corp.*, Memorandum Opinion and Order, 15 FCC Rcd 8640 (Enf. Bur. 2000) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator’s gross revenues).

<sup>18</sup> This forfeiture amount falls within the percentage range that the Commission has previously found acceptable. See *supra* note 17. If Onda Mexicana still believes paying this amount presents financial difficulties, we note that it could always pursue an installment payment plan to lessen the immediate impact of the forfeiture. See *infra* para. 12.

<sup>19</sup> Letter at 4.

<sup>20</sup> See *Centro Colegial Cristiano, Inc.*, Forfeiture Order, 28 FCC Rcd 14734 (Enf. Bur. 2013) (proposed forfeiture reduced based on history of compliance with the Rules).

<sup>21</sup> 47 U.S.C. § 405; 47 C.F.R. § 1.106.

<sup>22</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 1.89(b).

<sup>23</sup> 47 C.F.R. § 1.80.

<sup>24</sup> 47 U.S.C. § 504(a).

<sup>25</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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 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.<sup>26</sup> 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. **IT IS FURTHER ORDERED** that this Memorandum Opinion and Order shall be sent by both First Class Mail and Certified Mail, Return Receipt Requested, to Onda Mexicana Radio Group, Inc., at 1000 Universal studios Plaza, Bldg. 22A, Suite 253, Orlando, FL 32819, and to its counsel, Edward A. Maldonado, Esq., at 800 Douglas Road Suite 149, Coral Gables, FL 33134.

## FEDERAL COMMUNICATIONS COMMISSION

William Davenport  
Deputy Chief  
Enforcement Bureau

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<sup>26</sup> See 47 C.F.R. § 1.1914.