

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

In the Matter of
Iglesia Centro de Liberacion
Minor Change Application for
KJJG-LP, South Houston, Texas
NAL/Acct. No. 201841410018
FRN: 0025182973
Facility I.D No. 191681
BPL-20170130AAE

MEMORANDUM OPINION AND ORDER AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: November 13, 2018

Released: November 13, 2018

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. We have before us an application (Application) filed by Iglesia Centro de Liberacion (Iglesia Centro), which seeks to make minor changes to the licensed facilities of KJJG-LP, South Houston, Texas (Station). Also before us is a Petition to Deny (Petition) filed by Centro Cristiano de Vida Eterna (Centro Cristiano). In this Memorandum Opinion and Order and Notice of Apparent Liability (NAL), we find that Iglesia Centro apparently willfully and repeatedly violated Section 319(a) of the Communications Act of 1934, as amended (Act) by prematurely constructing the facilities proposed in the Application. Based upon our review of the record before us, we find Iglesia Centro apparently liable for a monetary forfeiture in the amount of five thousand dollars (\$5,000) and grant in part and deny in part the Petition. Upon resolution of the forfeiture matter, if there are no other issues that would preclude grant of the Application, we intend to grant it and the request for waiver of the second-adjacent channel minimum distance requirements that accompanied it.

II. BACKGROUND

2. Iglesia Centro filed the Application on January 30, 2017. Therein, it seeks authority to move the Station's transmitter to a different location. Because the new transmitter site does not satisfy the second-adjacent channel minimum distance requirements applicable to low power FM (LPFM) stations with respect to two FM stations, Iglesia Centro requested a second-adjacent channel waiver. In support of its waiver request, Iglesia Centro submitted an engineering analysis that purports to

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 CFR § 1.80. The Bureau has delegated authority to issue the NAL under Section 0.283 of the Rules. See 47 CFR § 0.283.

2 See 47 U.S.C. § 319(a).

3 47 CFR § 73.807.

4 The two stations are KROI(FM), Seabrook, Texas, and KKBQ(FM), Pasadena, Texas.

demonstrate that the Station's interference contour will not reach any potential listeners of the two FM stations.⁵

3. Centro Cristiano then filed the Petition on February 2, 2017. Therein, Centro Cristiano alleges that Iglesia Centro engaged in premature construction.⁶ Centro Cristiano also asserts that the second-adjacent waiver showing made by Iglesia Centro is deficient. Centro Cristiano filed a Supplement to Petition to Deny on February 9, 2017, which asserts that Iglesia Centro removed the antenna from the tower and, in doing so, "implicitly admitted its guilt with regard to the charge of premature construction."⁷

4. On February 10, 2017, Iglesia Centro amended the Application. According to Iglesia Centro the amendment involves "tech box changes with new documentation related to two-story buildings in the area."⁸ That same day, Iglesia Centro filed a brief opposition (Opposition). Centro Cristiano filed a Reply to Opposition to Petition to Deny (Reply) on February 23, 2017. Iglesia Centro then filed a supplemental pleading (Supplement), and Centro Cristiano responded, filing a supplemental pleading (Supplemental Reply) of its own.

III. DISCUSSION

A. Procedural Issues

5. At the outset we note that the Supplement and the Supplemental Reply both are unauthorized pleadings.⁹ We dismiss these pleadings without consideration.¹⁰ We likewise dismiss the Opposition because it was not served on Centro Cristiano as required by our *ex parte* rules.¹¹ Further, because we dismiss the Opposition, we do not consider the Reply filed by Centro Cristiano.¹²

B. Premature Construction

6. Section 319(a) of the Act states, in pertinent part, that "[n]o license shall be issued under the Authority of this Act for the operation of any station unless a permit for its construction has been granted by the Commission."¹³ Section 319 was enacted to ensure that applicants do not use incurred expenses as a means of exerting improper pressure upon the Commission to grant an application.¹⁴ It forecloses the Commission from issuing a license when the "entire station" has been constructed prior to the grant of a construction permit.¹⁵ This prohibition on premature construction of a broadcast station is not absolute though. The Commission has sanctioned certain types of pre-authorization construction, including site clearance, pouring of concrete footings for a tower, installation of a tower base and anchors, installation of a new power line, purchase and on-site storage (but not installation) of radio equipment and

⁵Application at Exh. 11.

⁶ Petition at 1-2.

⁷ Supplement to Petition to Deny at 2.

⁸ Application at Exh. 1 (as amended Feb. 10, 2017).

⁹ 47 CFR § 1.45.

¹⁰ See, e.g., *Christian Family Network, Inc.*, Memorandum Opinion and Order, 31 FCC Rcd 2459, 2460 n.4 (2016); *Saga Comm'cns of New England, LLC*, Letter Order, 30 FCC Rcd 4654, 4655 n.1 (MB 2015).

¹¹ 47 CFR §§ 1.47 and 1.1208.

¹² 47 CFR § 1.47 (limiting replies "to matters raised in the oppositions").

¹³ 47 U.S.C. § 319(a).

¹⁴ See, e.g., *Patton Comm'cns Corp.*, Letter Order, 81 FCC 2d 336, 337 (1980) (*Patton*); *WSAV, Inc.*, Memorandum Opinion and Order, 19 FCC 736 (1955), *aff'd sub nom. WJIV-TV, Inc. v. FCC*, 231 F.2d 725 (D.C. Cir 1956).

¹⁵ *Christian Broad. of the Midlands, Inc.*, Order, 103 FCC 2d 375, 378, para. 5 (1986) (*Christian Broadcasting*).

other preliminary steps having no intrinsic broadcast use.¹⁶ Pre-authorization construction of towers or installation of radio antennas, however, is strictly prohibited.¹⁷

7. Here, it is undisputed that Iglesia Centro mounted the Station's antenna on a tower at the location proposed in the Application and attached a transmission line to the antenna.¹⁸ Accordingly, we find that Iglesia Centro willfully and repeatedly violated Section 319(a) of the Act.¹⁹ Below we propose a forfeiture for this violation.

C. Proposed Forfeiture

8. 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.²⁰ Section 312(f)(1) of the Act defines willfully as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.²¹ 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,²² and the Commission has so interpreted the term in the Section 503(b) context.²³ 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."²⁴

9. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(8) of the Rules establish a base forfeiture amount of \$10,000 for construction and/or operation without an instrument of authorization.²⁵ 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 "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of

¹⁶ See, e.g. *Manahawkin Comm'cns Corp.*, Memorandum Opinion and Order, 17 FCC Rcd 342, 355-56, para. 22 (2001) (premature construction does not warrant denial of the application); *Wendell & Associates*, Memorandum Opinion and Order, 14 FCC Rcd 1671, 1679-80, para. 24 (1998). See also *MCI Comm'cns Corp.*, Order and Notice of Apparent Liability, 3 FCC Rcd 509, 509, para. 5 (1988), *modified*, Supplemental Order, 4 FCC Rcd 7299 (1988), *app. dismissed sub nom. TeleSTAR, Inc. v. FCC*, 901 F.2d 1131 (D.C. Cir. 1990); *Christian Broadcasting*, 103 FCC 2d at 377, para. 3; *Patton*, 81 FCC 2d at 337-38.

¹⁷ *Westinghouse Broad. Co., Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1171, 1173, paras. 12-13 (1974), *Merrimack Valley Comm'cns, Inc.*, Memorandum Opinion and Order, 20 FCC 2d 161, 163, paras. 8-9 (1969), *rehearing denied*, Memorandum Opinion and Order, 21 FCC 2d 440 (1970).

¹⁸ Petition at 1-2. While we dismiss the Opposition and Supplement, we note that, in them, Iglesia Centro admits to installation of the antenna and does not deny Centro Cristiano's allegation that it connected a transmission line to the antenna. Opposition at 1; Supplement at 1.

¹⁹ The fact that the violation lasted less than three weeks does not negate the violation or Iglesia Centro's liability for a forfeiture. However, we consider it below in determining adjustments to the base forfeiture amount.

²⁰ 47 U.S.C. § 503(b)(1)(B); see also 47 CFR § 1.80(a)(1).

²¹ 47 U.S.C. § 312(f)(1).

²² See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

²³ See *Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991).

²⁴ 47 U.S.C. § 312(f)(2).

²⁵ 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 CFR § 1.80(b)(8), note to paragraph (b)(8), Section I.

culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”²⁶ Considering the record as a whole and all of the factors required by Section 503(b)(2)(D) of the Act and the *Forfeiture Policy Statement*, we believe that a reduced forfeiture of five thousand dollars (\$5,000) is appropriate here. Specifically, while Iglesia Centro did prematurely construct the facilities proposed in the Application, the duration of the violation was less than three weeks.²⁷ Further, Iglesia Centro has no history of prior offenses.²⁸

D. Second-Adjacent Channel Waiver Request

10. Section 3(b)(2)(A) of the Local Community Radio Act of 2010 (“LCRA”) requires an applicant seeking a second-adjacent waiver to demonstrate that its proposed LPFM facilities “will not result in interference to any authorized radio service.”²⁹ Waiver applicants may show that “no actual interference will occur” due to “lack of population” and we will allow waiver applicants to use an undesired/desired signal strength ratio methodology to define areas of potential interference when proposing to operate near another station operating on a second-adjacent channel.³⁰ They also may propose use of directional antennas in making these showings.³¹

11. Iglesia Centro submitted an engineering analysis that purports to demonstrate that the facilities proposed in the Application will not cause interference to any FM stations operating on second-adjacent channels.³² Centro Cristiano asserts that this analysis is “flawed” because it relies upon the fact that the interference contour for the proposed facilities will “reach an artificial floor of 2 meters above ground level” and the fact that “all immediately surrounding structures are single story.”³³ Centro Cristiano asserts that many of the structures surrounding the proposed facilities actually are two-story structures and submits a map showing the proposed interfering contour and photographs of the two-story structures within that contour.³⁴ In response, Iglesia Centro amended the Application to propose a lower effective radiated power and use of a multiple section antenna. This altered the interference contour for the proposed facilities such that it reaches an artificial floor of 5 meters and eliminates any interference to two-story structures. We have reviewed the amended Application and engineering analysis and find that Iglesia Centro has demonstrated that the proposed facilities will not result in interference to any authorized radio service. Accordingly, upon resolution of the forfeiture matter, if there are no other issues that would preclude grant of the Application, we will grant Iglesia Centro’s request for a second-adjacent channel waiver and grant the Application.

²⁶ 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100, para. 27; 47 CFR § 1.80(b)(8).

²⁷ *See, e.g., Church Planters of America*, Memorandum Opinion and Order and Notice of Apparent Liability, 31 FCC Rcd 3607, 3612, para. 15 (MB 2016) (reducing forfeiture due to, among other things, short duration of the violation);

²⁸ *See, e.g., Zuma Beach FM Emergency and Cmty. Broad., Inc.*, Order, DA 18-879 (MB Aug. 28, 2018) (reducing forfeiture based on “history of compliance”); *Rufus Resources, LLC*, Forfeiture Order, DA 18-746 (MB July 19, 2018) (same).

²⁹ Pub. L. No. 111-371, 124 Stat. 4072 (2011).

³⁰ *Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15429, para. 78 (2012).

³¹ *Id.* at 15429, para. 79.

³² Application at Exh. 11. As originally filed, the exhibit stated that the proposed facilities’ interfering contour would reach an artificial floor of two meters above ground level. Iglesia Centro asserted that, because all the surrounding buildings were single-story, the interference contour will not reach any potential listeners of KROI (FM) or KKBQ(FM). Thus, Iglesia Centro argued that the proposed facilities satisfied the requirements for a second-adjacent channel waiver.

³³ Petition at 2-3.

³⁴ Petition at 2-3, Attachs. 1 and 2.

IV. ORDERING CLAUSES

12. 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, that Iglesia Centro de Liberacion is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of \$5,000 for its apparent willful and repeated violations of Sections 319(a) of the Communications Act of 1934, as amended.

13. 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, Iglesia Centro de Liberacion SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

14. 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/Account Number and FRN Number 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 sent to: Chief Financial Officer – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.³⁵ Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

15. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington D.C. 20554, ATTN: Albert Shuldiner, and MUST INCLUDE the NAL/Acct. No. referenced above.

16. The Bureau 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.

17. IT IS FURTHER ORDERED that, Iglesia Centro de Liberacion shall place a copy of this Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture in the records maintained for KJJG-LP pursuant to Section 73.878 of the Commission's rules.

18. IT IS FURTHER ORDERED that a copy of this Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Iglesia Centro de Liberacion, 709 Avenue N., South Houston, Texas 77587.

³⁵ See 47 CFR § 1.1914.

19. Finally, IT IS ORDERED that the Petition to Deny filed by Centro Cristiano de Vida Eterna on February 2, 2017, IS GRANTED IN PART AND OTHERWISE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division, Media Bureau