

granted that application on October 5, 1995, the second period of unauthorized transfer of the station lasted slightly more than six months.

3. In the response to the NAL, Clark disputes that Monte Corporation violated the Act and our rules with respect to the sale of the station to the Ministry. In this regard, Clark claims that he contacted the Commission to ascertain what paperwork he needed to file. From that contact, Clark claims that he understood that Monte Corporation did not have to file an application to assign the station's license because it sold only the "property" to the Ministry, not the license. In support of this claim, we note that Clark wrote to the Commission in September 1993 and requested a form to "change the ownership of the station but not the license." Moreover, Clark argues that because he was the president and founder of the Ministry, he remained "at the helm of the radio station." Thus, in Clark's view, "the only thing that changed . . . was just the physical property."

4. With respect to the unauthorized transfer to Ulbricht, Clark argues that he did not voluntarily cede control to Ulbricht but that Ulbricht, acting in a dishonest manner, wrested control from Clark. Clark also maintains that Ulbricht "commandeered" the station and threatened Clark with arrest by the local police if Clark were to attempt to dislodge Ulbricht. Clark further contends that he was "duped" into signing the LMA by Ulbricht, who supposedly told Clark that the Commission would not approve the pending assignment application (from Monte Corporation to Ulbricht) unless the LMA was signed. Finally, Clark claims that Ulbricht misled Clark into signing the LMA on the pretense that Ulbricht would then have sufficient funds to pay Clark the sales price for Station KSWB.

5. In determining the amount of a forfeiture, the Commission is to consider "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." Section 503(b)(2)(D) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b)(2)(D). After carefully considering your response, we continue to believe that unauthorized transfers of control occurred contrary to the Communications Act and our rules. Nonetheless, we conclude that the forfeiture should be reduced from \$12,000 to \$10,000.

6. Section 310(d) of the Communications Act and Section 73.3540 of the Commission's Rules require the consent of the Commission prior to effectuation of a voluntary assignment of license or transfer of control. Such an assignment or transfer can occur in a wide variety of circumstances, including those which result only in changes in the form of the entity that possesses the right to control the station's finances, personnel and programming. Thus, even when an assignment results in nothing more than a change in the form of the entity holding the license and the same individual continues to control the license, the assignment must receive prior approval from the Commission. See Section 73.3540(f).

7. Accordingly, before Monte Corporation could sell the station to the Ministry, it had to submit an appropriate application and obtain Commission consent. Because it did not do so, an unauthorized transfer of control occurred, which is a violation of the Communications Act and

our rules. Moreover, such violation was continuing in nature because Monte Corporation and the Ministry never filed an assignment application and never received Commission approval of the assignment.

8. Nonetheless, we recognize the presence of mitigating circumstances in this case. Specifically, Clark attempted to ascertain the proper course to follow regarding the sale of the station to the Ministry. To this end, after Clark had informed the Commission of the sale, he requested a form to change the ownership of the station but not the license. Clark therefore apparently understood, erroneously, that, despite the sale of the station's assets, there was no need for the submission of an application to assign the station's license. While Clark's understanding was incorrect (see, e.g., Victor Valley Broadcasting, Inc., 2 FCC 2d 495 (1966)), it appears that he was seeking information and forms to comply with the Commission's requirement. However, it was not until an inquiry letter dated May 15, 1995, that he learned that an assignment application should have been filed and Commission consent obtained prior to the sale of the station to the Ministry. Given these circumstances, we conclude that a \$2,000 reduction in the forfeiture is appropriate. Cf. Hualapai Broadcasters, Inc., 8 FCC Rcd 4914 (MMB 1993) (Forfeiture reduced in part because licensee relied upon legal opinion of a recognized authority).

9. We perceive no mitigating circumstances, however, with respect to Clark's actions regarding Ulbricht. We conclude that Clark willingly allowed Ulbricht to assume control of the station at least by April 1, 1995, and that he did so, in part, to ensure payments to himself pursuant to the LMA and the then-pending application to assign the KSWB license. Although Clark's claims also reflect a belief that he has somehow been victimized by Ulbricht, there is no indication that Clark ever attempted to use local legal processes to reestablish Monte Corporation's control over the station's affairs.¹ Rather, Clark allowed Ulbricht to continue to dominate the affairs of KSWB. Given the foregoing, we find that the unauthorized transfer of control was willful and repeated in that it continued for more than six months, and we believe that no further reduction in the amount of the proposed forfeiture is warranted.

10. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), Monte Corporation FORFEIT to the United States the sum of Ten Thousand Dollars (\$10,000) for the willful and repeated violations of Section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(d), and Section 73.3540 of the Commission's Rules, 47 C.F.R. § 73.3540 as described above. Monte Corporation may take any of the steps outlined in the attachment to this letter regarding payment of the forfeiture pursuant to Section 1.80 of the Commission's Rules.

¹ In this regard, it is not this agency's role to enforce agreements such as the LMA in the instant case or to enforce local civil and criminal laws involving trespass and the like.

11. The Mass Media Bureau will send by Certified Mail -- Return Receipt Requested, copies of this Memorandum Opinion and Order and Forfeiture Order to Monte Corporation.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau