

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

In the Matter of	)	
	)	
Maria L. Salazar	)	File No. EB-02-KC-174
Licensee, Station KTCM(FM)	)	NAL/Acct. No. 200232560011
Kingman, Kansas	)	FRN 0003-7578-12

**MEMORANDUM OPINION AND ORDER**

**Adopted:** March 10, 2004

**Released:** March 16, 2004

By the Commission:

**I. INTRODUCTION**

1. By this *Memorandum Opinion and Order* (“*Order*”), we grant in part and deny in part the April 24, 2003, petition for reconsideration filed by Maria L. Salazar,<sup>1</sup> (“*Salazar*”) licensee of Station KTCM(FM), Kingman, Kansas and owner of antenna structure # 1057462, of the *Forfeiture Order* issued on April 22, 2003,<sup>2</sup> and reduce the assessed forfeiture against Salazar to thirty-four thousand dollars (\$34,000). The *Forfeiture Order* imposed a monetary forfeiture in the amount of thirty-nine thousand dollars (\$39,000) against Salazar, for willfully and repeatedly violating Sections 301 and 303(q) of the Communications Act of 1934, as amended, (the “*Act*”)<sup>3</sup> and Sections 11.35(a), 17.51, 73.1125(a), 73.1350(a) and 73.3526 of the Commission’s Rules.

**II. BACKGROUND**

2. On April 8, 2002, agents from the Commission’s Kansas City, Missouri Field Office (“*Field Office*”) conducted an on-site investigation of Station KTCM(FM). The agents determined that Salazar was licensed to operate Station KTCM(FM) and that the license specified Kingman, Kansas as the station’s community of license. However, the agents found that the station had been transmitting from the Latino Boom Nightclub in Wichita, Kansas -- a location that was outside its community of license and that had not been authorized by the Commission.<sup>4</sup> Additionally, the agents found that the station’s main studio had been relocated to and had been originating programming from the Latino Boom Nightclub -- a relocation that was outside the prescribed main studio perimeters and that had not been authorized by the

<sup>1</sup> The Commission received the pleading, captioned “*Petition for Reconsideration*,” two days after it issued the *Forfeiture Order* in this proceeding. See Facsimile from David Tillotson, Esq. to Ricardo Durham, Deputy Division Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (April 24, 2003) (attaching a copy of the pleading). Mr. Tillotson provided a date-stamped copy of the pleading, which showed that it was filed on August 12, 2002, within thirty days of the release of the *Notice of Apparent Liability* in *Maria L. Salazar*, 17 FCC Rcd 14090 (2002) (“*NAL*”). The Commission, however, has no record of receiving the pleading. We will treat and consider the pleading as a petition for reconsideration of the *Forfeiture Order* under 47 C.F.R. § 1.106.

<sup>2</sup> *Maria L. Salazar*, 18 FCC Rcd 7960 (2003) (“*Forfeiture Order*”).

<sup>3</sup> 47 U.S.C. §§ 301, 303(q).

<sup>4</sup> The Latin Boom Nightclub is located at 1514 West 21<sup>st</sup> Street North, Wichita, Kansas.

Commission.<sup>5</sup> The agents further found that the top flashing beacon and three of the four side lamps were not lit on the station's associated antenna structure # 1057462, and that the outage had not been reported to the Federal Aviation Administration ("FAA"). The agents also found that station's main studio did not have any Emergency Alert System ("EAS") equipment installed. Finally, the agents found that Station KTCM(FM) did not maintain any public inspection files. At the time of inspection, Salazar did not deny the agents' findings. As a result of the inspection, on April 9, 2002, the agents issued Salazar a Warning regarding the unauthorized operation of radio transmitting equipment. Salazar filed a timely response to the Warning.<sup>6</sup>

3. The Field Office's investigation culminated in the Commission's issuance of a *Notice of Apparent Liability for Forfeiture* ("NAL")<sup>7</sup> that proposed a \$39,000 forfeiture against Salazar for her apparent willful and repeated violations of Sections of the Act and the Commission's Rules. The *NAL* proposed a \$4,000 forfeiture for Salazar's apparent violations of Section 301 of the Act and Section 73.1350(a) of the Commission's Rules (failure to operate a station at an authorized location),<sup>8</sup> a \$10,000 forfeiture for her apparent violations of Section 303(q) of the Act and Section 17.51 of the Commission's Rules (failure to maintain prescribed obstruction lighting for antenna structure # 1057462),<sup>9</sup> an \$8,000 forfeiture for her apparent violations of Section 11.35(a) of the Commission's Rules (failure to install and maintain Emergency Alert System ("EAS") equipment),<sup>10</sup> a \$7,000 forfeiture for her apparent violation of Section 73.1125(a) of the Commission's Rules (failure to maintain a main studio at an authorized location),<sup>11</sup> and a \$10,000 for her apparent violation of Section 73.3526 of the Commission's Rules (failure to maintain a public inspection file).<sup>12</sup>

4. The Commission issued a *Forfeiture Order* on April 22, 2003,<sup>13</sup> having had no record of receiving a response to the *NAL*.<sup>14</sup> On April 24, 2003, the Commission received Salazar's petition for reconsideration. In her petition, Salazar does not dispute the Commission's findings in the *NAL*. As discussed below, Salazar nevertheless seeks a substantial reduction in the assessed forfeiture, based upon her inability to pay, her unfamiliarity with Commission requirements, her efforts to correct the noted violations, and her belief that the Commission's base forfeiture scheme is arbitrary and excessive.

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<sup>5</sup> Absent a Commission waiver, a broadcast station's main studio must be maintained in a reasonably accessible location (*i.e.*, within the station's community of license, within the principal contour of any broadcast station licensed to the station's community of license, or within 25 miles from the reference coordinates of center of the station's community of license). See 47 C.F.R. §§ 73.1125(a)(1)-(3), (d)(2). Here, Salazar never sought and the Commission never granted authorization to move Station KTCM(FM)'s main studio to the Latin Boon Nightclub. The Latin Boom Nightclub was outside Kingman, Kansas, was 12.6 miles outside the principal contour of Station KCVW(FM) (the only other broadcast station licensed to Kingman, Kansas), and was 41.9 miles from the reference coordinates of Kingman, Kansas, and, as such, was not located within the parameters of the main studio rule.

<sup>6</sup> See Letter from Maria L. Salazar to Federal Communications Commission, Enforcement Bureau, Kansas City Office (April 18, 2002).

<sup>7</sup> See note 1, *supra*.

<sup>8</sup> 47 U.S.C. § 301; 47 C.F.R. § 73.1350(a).

<sup>9</sup> 47 U.S.C. § 303(q); 47 C.F.R. § 17.51.

<sup>10</sup> 47 C.F.R. § 11.35(a).

<sup>11</sup> 47 C.F.R. § 73.1125(a).

<sup>12</sup> 47 C.F.R. § 73.3526

<sup>13</sup> See note 2, *supra*.

<sup>14</sup> See note 1, *supra*.

### III. DISCUSSION

5. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>15</sup> Section 1.80 of the Rules,<sup>16</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.<sup>17</sup> In examining Salazar's petition, Section 503(b)(2)(D) of the Act requires that the Commission take into account 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 other such matters as justice may require.<sup>18</sup> We will respond to each of Salazar's claims separately below.

6. First, Salazar claims she is unable to pay the assessed forfeiture.<sup>19</sup> Salazar describes herself as a single mother, who is the sole support for her eleven year-old son and whose income is solely derived from a restaurant,<sup>20</sup> and Station KTCM. According to Salazar, the station has lost money "every year since she acquired it" in 1996.<sup>21</sup> Absent a substantial reduction in the forfeiture amount, Salazar claims that she likely will be "force[d] . . . to discontinue operating Station KTCM . . . and declare personal bankruptcy."<sup>22</sup> In support of her claim, Salazar submits her individual tax returns and Station KTCM's profit and loss statements for 1999, 2000 and 2001.

7. In analyzing an economic hardship claim, the Commission generally has looked to gross revenues as a reasonable and appropriate yardstick in determining whether a violator is able to pay the assessed forfeiture.<sup>23</sup> Indeed, the Commission has stated that where the violator's gross revenues are sufficiently large, the fact that net losses are reported, alone, does not necessarily signify an inability to pay.<sup>24</sup> We note that Salazar's 1999, 2000 and 2001 tax returns listed the restaurant and the station, claimed no dependents, and reported steadily increasing gross income and particularly significant revenue gains in 2001. We further note, contrary to Salazar's assertions, that Station KTCM's statements reflect that it only had a loss in 2000, and that it had profits in 1999 and 2001. Having reviewed Salazar's submitted documentation, we find that her significant gross revenues reported in 2001 represent reliable and objective evidence of her ability to pay. Therefore, we are not persuaded that a substantial reduction of the forfeiture is warranted. However, we conclude that a modest reduction of the assessed forfeiture amount for the multiple noted violations, from \$39,000 to \$34,000, is justified. The forfeiture, as reduced, represents a percentage of Salazar's 2001 gross revenues comparable to that assessed against

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<sup>15</sup> 47 U.S.C. § 503(b).

<sup>16</sup> 47 C.F.R. § 1.80.

<sup>17</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

<sup>18</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>19</sup> See Petition at 2.

<sup>20</sup> The restaurant, the Taco Loco, is located at 2247 N. Broadway, Wichita, Kansas. Salazar represents that the restaurant was destroyed by fire and has not reopened for lack of funds and lack of insurance. See Petition at 4. Field Office agents, however, have reported that the restaurant was only been partially destroyed by fire, has reopened, and is currently operating.

<sup>21</sup> *Id.* at 2.

<sup>22</sup> *Id.* at 6.

<sup>23</sup> See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 ¶ 8 (1992); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17106-07 ¶ 43.

<sup>24</sup> See, e.g., *Local Long Distance, Inc.*, 15 FCC Rcd 24385 (2000), *recon. denied*, 16 FCC Rcd 10023, 10025 ¶ 6 (2001); *Independent Communications, Inc.*, 14 FCC Rcd 9605, *recon. denied*, 15 FCC Rcd 16060, 16060 ¶ 2 (2000); *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 ¶ 8 (1992).

gross revenues in prior cases. <sup>25</sup>

8. Second, Salazar claims that she was unfamiliar with the Commission's Rules, and that, in FCC compliance matters, she "exclusively" relied upon and followed the advice of Charlie Babbs, since deceased, who "held himself out as a professional and experienced broadcast engineer."<sup>26</sup> Specifically, Salazar represents that in 2000, upon Mr. Babbs's recommendation, she relocated the operations and the main studio of Station KTCM from the authorized site in Kingman, Kansas to the Latin Boom Nightclub in Wichita, Kansas, to avoid interference problems, which prevented the station's Spanish language programming from reaching "the Spanish speaking residents of Wichita and the Wichita merchants that the [sic] patronized."<sup>27</sup> Salazar claims that Mr. Babbs did not advise her that it was "illegal" to operate from an unauthorized site, that there were any main studio and public file requirements, and, presumably, that there were also antenna structure lighting and EAS requirements.<sup>28</sup>

9. A licensee is charged with the responsibility of knowing and complying with all the requirements of the Act and the Commission's Rules.<sup>29</sup> That responsibility is not lessened, mitigated or excused because the licensee relied upon the erroneous advice of an employee or independent contractor.<sup>30</sup> Because Salazar's alleged reliance on the consulting engineer's advice does not lessen, mitigate or excuse her responsibility to be familiar and comply with the requirements of the Act and the Commission's Rules, we find no basis to reduce the base forfeiture amounts assessed for each of the multiple noted violations.

10. Third, Salazar claims that "immediately after the FCC inspection," she ceased operations from the unauthorized location, sought to remedy the other noted violations, and engaged communications counsel to advise her in FCC compliance matters.<sup>31</sup> The Commission's long established policy finds that remedial measures, while commendable, do not lessen, mitigate, or excuse past infractions of the Act or the Commission's Rules<sup>32</sup> -- particularly when such measures are instituted only after Commission investigation and notice of violations.<sup>33</sup> Thus, Salazar's subsequent remedial action provides no basis to reduce the base forfeiture amounts assessed for each of the multiple noted violations.

11. Finally, while Salazar admits that she operated the station at an unauthorized location in

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<sup>25</sup> See *Local Long Distance, Inc.*, 16 FCC Rcd at 10025, ¶6 and *Hoosier Broadcasting Corp.*, 15 FCC Rcd at 8641, ¶7.

<sup>26</sup> Petition at 3.

<sup>27</sup> *Id.* at 2, 3. In this connection, Salazar represents that Translator Station K261BL, which caused the interference problems, has since ceased operations. *Id.* at 4.

<sup>28</sup> *Id.* at 3.

<sup>29</sup> See *Forfeiture Policy Statement*, 12 FCC Rcd at 17099 ¶ 22; see also *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 ¶ 7 (1994); *Wagenvoord Broadcasting Co.*, 35 FCC 361, 361-62 ¶ 3 (1972); *L.T. Simes II and Raymond Simes*, 18 FCC Rcd 8977, 8980 ¶ 11 (Enf. Bur. 2003); *Maritel Mississippi River, Inc.*, 18 FCC Rcd 1481, 1484 ¶ 10 (Enf. Bur. 2003); *Joy Public Broadcasting Corp.*, 14 FCC Rcd 11326, 11328 ¶ 7 (CIB 1999).

<sup>30</sup> See *L.T. Simes II and Raymond Simes*, 18 FCC Rcd at 8980 ¶ 11; *Joy Public Broadcasting Corp.*, 14 FCC Rcd at 11328 ¶ 7. In a similar case, the Commission rejected a request to reduce a forfeiture based on the licensee's reliance on advice of a consulting engineer, since deceased. See *Wagenvoord Broadcasting Co.*, 35 FCC at 361-62 ¶ 3.

<sup>31</sup> Petition at 3-4.

<sup>32</sup> See *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 ¶ 14 (2002); *KGVL, Inc.*, 42 FCC 2d 258, 259 (1973); see also *Maritel Mississippi River, Inc.*, 18 FCC Rcd at 1484 ¶ 10.

<sup>33</sup> See, e.g., *Max Media of Montana, LLC*, DA 03-3276, 2003 WL 22387375 ¶ 11 (Enf. Bur. October 21, 2003); *East Tennessee Radio Group, L.P.*, DA 03-868, 2003 WL 1526638 ¶ 7 (Enf. Bur. March 26, 2003).

Wichita, Kansas, and that she failed to maintain prescribed antenna structure lighting, EAS equipment and public information files, she contends the Commission's assessed forfeiture amounts are excessive.<sup>34</sup> According to Salazar, the failure to maintain a reasonably accessible main studio and to maintain any public information file material (requirements which serve "some valid public interest purposes") "pales in comparison to very real and immediate harm to the public and the public interest" that results from the operation of an unlicensed station (which potentially, "and likely did, cause interference"), unlit towers (which "posed a serious risk to air navigation"), and lack of EAS equipment (which precluded emergency system participation).<sup>35</sup> Salazar concludes that it is "arbitrary and capricious" to set base forfeiture amounts for violations of the main studio and public file requirements significantly higher than those set for violations of the EAS equipment, lighting and licensing requirements.<sup>36</sup>

12. In adopting the forfeiture guidelines and implementing rules, the Commission stated that it "will initially assess . . . violations [of the Act and the Commission's Rules] at the statutory amount," but, as appropriate, will adjust the base amount upward or downward based on the factors set out in Section 503 of the Act and particular facts presented in each case.<sup>37</sup> Salazar's contentions notwithstanding, the Commission has rejected arguments that characterize violations of certain Rules, such as the public information file rule, as minor and deserving of reduced forfeitures.<sup>38</sup> We find Salazar's arguments unpersuasive, and thus find no basis to reduce the base forfeiture amounts assessed for each of the multiple noted violations.<sup>39</sup>

#### IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act<sup>40</sup> and Section 1.106 of the Rules,<sup>41</sup> the Petition for Reconsideration filed by Maria L. Salazar of the Commission's April 22, 2003 *Forfeiture Order* for NAL No. 200232560011 **IS GRANTED TO THE EXTENT NOTED HEREIN AND DENIED IN ALL OTHER RESPECTS.**

14. Payment of the \$34,000 forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>42</sup> Payment may be made by mailing a check or similar instrument, payable to the order of the

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<sup>34</sup> See Petition at 6-8.

<sup>35</sup> *Id.* at 7.

<sup>36</sup> *Id.* at 8.

<sup>37</sup> See *Forfeiture Policy Statement*, 12 FCC Rcd at 17100 ¶ 26.

<sup>38</sup> *Id.* at 17104-05 ¶ 39. In this connection, we note that the Commission's public information file and the main studio rules, respectively, safeguard the public's ability to assess the station's service and to meaningfully participate at the station's renewal process, and ensure the station's accessibility to and nexus with its community, to serve and respond to community programming needs. See *Forfeiture Policy Statement*, 12 FCC Rcd at 17104-05 ¶ 39; *Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, MM Docket No. 860406, 2 FCC Rcd 3215, 3219 ¶¶ 36-38 (1987), *modified*, 3 FCC Rcd 5024 (1988). As such, the public information and main studio requirements are integral components of a licensee's obligation to serve the public interest, and meet its community service obligations. See 47 U.S.C. § 307(a).

<sup>39</sup> Indeed, given the gravity and duration of the violations, the facts presented may have warranted an upward adjustment of the base forfeiture amounts.

<sup>40</sup> 47 U.S.C. § 405.

<sup>41</sup> 47 C.F.R. § 1.106.

<sup>42</sup> 47 U.S.C. § 504(a).

Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232560011 and FRN 0003-7578-12. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>43</sup>

15. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to David Tillotson, Esq., counsel for Maria L. Salazar, at 4606 Charleston Terrace, N.W., Washington, D.C. 20007-1911.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>43</sup> See 47 C.F.R. § 1.1914.