

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

In the Matter of	)	
	)	Facility ID No. 69853
<b>VI/MAN Broadcasting</b>	)	NAL/Acct. No. MB20041810084
	)	FRN: 0006881601
Licensee of Station WEGA(AM)	)	File No. BR-20040305AAG
Vega Baja, Puerto Rico	)	

**FORFEITURE ORDER**

**Adopted: July 14, 2008**

**Released: July 15, 2008**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of three thousand dollars (\$3,000), to VI/MAN Broadcasting (“Licensee”), licensee of Station WEGA(AM), Vega Baja, Puerto Rico (“Station”), for willfully and repeatedly violating Section 73.3539 of the Commission’s Rules (“Rules”) and Section 301 of the Communications Act of 1934, as amended (“Act”) for its failure to timely file a license renewal application and for unauthorized operation of the Station.<sup>1</sup>

**II. BACKGROUND**

2. On August 25, 2004, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of six thousand (\$6,000) to Licensee for these violations.<sup>2</sup> Licensee filed a Request for Cancellation or Reduction of Proposed Forfeiture (“Request”) on September 15, 2004.

3. As noted in the NAL, Licensee’s renewal application for the current WQAB(FM) license term was due on October 1, 2003, four months prior to the February 1, 2004, expiration date.<sup>3</sup> Licensee did not file the application until March 5, 2004, more than 30 days after the Station’s license had expired. Licensee claims that it attempted to file its license renewal application in a timely manner but that the electronically submitted application was never accepted by the Commission due to a miscommunication concerning the filing fee for the application. As a result, the Station’s license expired on February 1, 2004. Upon learning of the expiration of the Station’s license, Licensee properly tendered both the subject license renewal application and the request for special temporary authorization (“STA”) to continue operation pending consideration of the license renewal application. The staff granted the STA request on March 15, 2004.<sup>4</sup>

<sup>1</sup> 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

<sup>2</sup> Letter to VI/MAN Broadcasting from Peter Doyle, reference 1800B3 (MB August 25, 2004).

<sup>3</sup> See 47 C.F.R. §§ 73.1020, 73.3539(a).

<sup>4</sup> Letter to Audrey Rasmussen, Esq., Ref. 1800B3-MFW (MB Mar. 15, 2004).

4. On August 25, 2004, the staff advised Licensee of its apparent liability for a forfeiture of \$6,000 for its failure to timely file the Station's renewal application and for unauthorized operation of the Station.<sup>5</sup> In response, Licensee filed the subject Request.

5. In support of its Request, Licensee states that it did in fact timely file its renewal application on September 25, 2003, and submitted its filing fee and Form 159 shortly thereafter on September 30, 2003. However, the check and the Form 159 were returned by a Commission cover letter on October 17, 2003, stating that Licensee's application was unacceptable for filing because the Form 159: (1) erroneously listed Licensee's FCC Registration Number ("FRN") as being associated with both the payer and the Licensee, and (2) did not include the payer/applicant's FRN. Licensee states that it returned the check and the revised Form 159 on October 27, 2003. Licensee claims that the Commission deposited the check on November 6, 2003, but that "the application was never automatically filed by the Commission following the FCC deposit of the payment."<sup>6</sup>

6. Licensee argues that the Commission's reasons for returning the Form 159 were contradictory and that, as such, Section 1.8004 of the Rules was not applicable.<sup>7</sup> Licensee further argues that had the Commission properly associated the resubmitted check with the renewal application, which was never released from the Consolidated Database System ("CDBS"), the license renewal application would have been considered timely filed. In the alternative, Licensee argues that the forfeiture amount be significantly reduced based on its "good faith and diligence."<sup>8</sup> Licensee asserts these reasons warrant a cancellation or reduction of the assessed forfeiture.

### III. DISCUSSION

7. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>9</sup> Section 1.80 of the Rules,<sup>10</sup> and the Commission's *Forfeiture Policy Statement*.<sup>11</sup> In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we 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 such other matters as justice may require.<sup>12</sup>

8. Licensee first asserts that Commission staff improperly returned its Form 159, maintaining that it did, in fact, supply its FRN. After reviewing the record before us, we agree with the staff determination that Licensee did not properly complete its Form 159. In its initial filing, Licensee listed an individual named Carmelo S. Roman as the payer, and itself as the applicant. However, Licensee erroneously listed the same FRN for both entries. Under Section 1.8002(a)(5) of the Rules, anyone paying statutory charges on behalf of another entity is required to obtain an FRN.<sup>13</sup> Since the

<sup>5</sup> The Commission granted the above-referenced license renewal application on August 3, 2004.

<sup>6</sup> Request at 2.

<sup>7</sup> See 47 C.F.R. § 1.8004(b). Under that section, filings subject to the FRN requirement and submitted without an FRN will be returned or dismissed.

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

<sup>9</sup> 47 U.S.C. § 503(b).

<sup>10</sup> 47 C.F.R. § 1.80.

<sup>11</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 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>12</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>13</sup> See 47 C.F.R. § 1.8002(a)(5). See also *Amendment Of Parts 1, 21, 61, 73, 74, And 76 of the Commission's Rules*, Report and Order, 16 FCC Rcd 16138, 16145 (2001) (requiring submissions made by third parties to include FRNs for both the payer and the entity on whose behalf the payment is made).

FRN given for Mr. Roman was already associated with Licensee, the staff properly concluded that Licensee failed to list an FRN for Mr. Roman. Accordingly, we find that Commission staff properly concluded that Licensee's September 2003 renewal application was unacceptable for filing.

9. Licensee next asserts that the Commission failed to associate its resubmitted check with the renewal application it submitted on September 25, 2003. Had it done so, Licensee maintains, its renewal application would have been considered timely filed and its license would not have expired. However, Licensee was required to resubmit its renewal application when it filed its revised Form 159 and check on October 27, 2003, but failed to do so. As such, despite the fact that the Commission processed Licensee's filing fee, the application was never considered as having been properly filed. The Licensee's filing on March 5, 2004, was the only renewal application that was properly filed.

10. We have considered Licensee's response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully<sup>14</sup> and repeatedly<sup>15</sup> violated Section 73.3539 of the Rules and Section 301 of the Act.<sup>16</sup> While we decline to cancel the forfeiture, we find that Licensee's efforts to properly file the renewal application, as evidenced by the Commission's processing of the application filing fee, justify a good faith reduction of the forfeiture amount.<sup>17</sup> Accordingly, we reduce the forfeiture amount from \$6,000 to \$3,000 on this basis.

#### IV. ORDERING CLAUSES

11. 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,<sup>18</sup> that VI/MAN Broadcasting, SHALL FORFEIT to the United States the sum of \$3,000 for willfully and repeatedly violating Section 73.3539 of the Commission's Rules and Section 301 of the Communications Act of 1934, as amended.

12. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at 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, BNF: FCC/ACV--27000001 and account number as expressed

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<sup>14</sup> 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. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*").

<sup>15</sup> Section 312(f)(1) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(1). See also *Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

<sup>16</sup> 47 U.S.C. § 301.

<sup>17</sup> See, e.g., *Larson-Wynn, Inc.*, Forfeiture Order, 22 FCC Rcd 16749, 16751 (EB 2007) (reducing forfeiture amount based on licensee's good faith efforts to properly file its extension application, as evidenced by the licensee's submission of, and the Commission's deposit of, the application filing fee).

<sup>18</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

on the remittance instrument. If 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).<sup>19</sup>

13. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return, Receipt Requested, and by First Class Mail to VI/MAN Broadcasting, Apartado 1488, Vega Baja, Puerto Rico 00694, and to its counsel, Audrey P. Rasmussen, Esq., Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C., 1120 20<sup>th</sup> St., N.W., Suite 700, North Building, Washington, D.C. 20036-3406.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>19</sup> See 47 C.F.R. § 1.1914.