

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

In the Matter of)
)
Liability of)
)
Ana G. Mendez Educational Foundation)
Licensee, Noncommercial Station WMTJ-TV)
Fajardo, Puerto Rico)
)
For a Forfeiture)

FORFEITURE ORDER

Adopted: November 14, 1997

Released: November 17, 1997

By the Chief, Mass Media Bureau:

1. Pursuant to Section 503(b) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 503(b), and Sections 1.80 and 0.283 of the Commission's Rules, the Chief, Mass Media Bureau, on April 14, 1994, released a *Memorandum Opinion and Order*, 9 FCC Rcd 1797 (MMB 1994) ("*MO&O*"), which ordered the Ana G. Mendez Educational Foundation ("Foundation") to forfeit \$3,500 for repeated violations of Section 399B of the Act, 47 U.S.C. §399B, and Section 73.621(e) of the Commission's Rules, 47 C.F.R. §73.621(e). By this Forfeiture Order, we vacate the *MO&O*, recompute the forfeiture, and reduce it to \$3,000.

2. In initially determining the forfeiture amount, we followed the standards established in *Standards for Assessing Forfeitures*, 8 FCC Rcd 6215 (1993). On July 12, 1994, the United States Court of Appeals for the District of Columbia vacated those standards. See *United States Telephone Assn. v. FCC*, 28 F.3d 1232 (D.C. Cir. 1994). In light of the court's decision, it becomes necessary to recompute the amount of the forfeiture. As specified by the Commission in *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, FCC 97-218, released July 28, 1997, we will evaluate the instant matter "under the case-by-case approach in effect when the violation occurred." *Id.* at ¶49.

3. In the *MO&O*, we noted that the Foundation conceded that it had broadcast commercial messages for five companies during its coverage of the 1993 U.S. Open Tennis Tournament. After analyzing the Foundation's records, we determined that several hundred commercial messages had been aired over the course of seven days. In *Tyree, James W.*, 6 FCC Rcd 2034 (MMB 1991), we issued a Notice of Apparent Liability for a forfeiture of \$3,000 for apparent repeated violations of Section 399B, where a noncommercial radio station was found to have broadcast commercials regarding seven entities over a three-day period and admitted that such commercials had been broadcast consistently during a seven-month period. In *Springtown Educational Broadcasting Foundation*, 7 FCC Rcd 2588 (MMB 1992), we issued a Forfeiture Order for \$5,000 to the licensee of a noncommercial radio station which broadcast commercials on three different dates on behalf of 14 different entities. Finally, in *Penfold*

Communications, Inc., DA 97-1740, released August 15, 1997, we issued a Notice of Apparent Liability for a forfeiture of \$6,000 to a noncommercial radio station licensee which had broadcast commercials on behalf of six entities over a two-day period and which had a history of past rule violations.

4. Considering the number of commercials aired by the Foundation and their limited broadcast duration, we conclude that a \$3,000 forfeiture is an appropriate amount as compared to forfeitures imposed for similar violations of Section 399B. In this regard, we note that the forfeiture proposed is less than those imposed in *Springtown* and *Penfold* because both had aggravating factors not present here. Specifically, in *Springtown*, the licensee continued to violate the statute after both a letter of inquiry and a Notice of Apparent Liability had been sent, while in *Penfold*, the licensee had previously received a Notice of Apparent Liability for violating the prohibition against airing commercials on the noncommercial service. Here, as in *Tyree*, the licensee's violations apparently ceased once its transgressions were brought to its attention. Moreover, in the present case, the station has had no past rule violations, unlike the licensee in *Penfold*. Thus, in recomputing the forfeiture, we have considered the Foundation's history of compliance with our rules.

5. Moreover, we reject the arguments contained in the Foundation's January 28, 1994, request for reduction or elimination of the forfeiture. Thus, we will not eliminate the forfeiture or reduce it further because the Foundation supposedly lacked a specific intent to violate our rules or because the violation involved one broadcast event, a tennis tournament. Regardless of the Foundation's claimed intent or the nature of the programming involved, the violations occurred repeatedly -- indeed, several hundred times over a seven day period. Likewise, we will not eliminate the forfeiture or reduce it further because the money required to pay the forfeiture could be better spent on program services for the public. Any licensee could so contend; it simply provides no basis for altering the amount of the forfeiture.

6. Accordingly, IT IS ORDERED, that the April 14, 1994, *MO&O* assessing a \$3,500 forfeiture against the Ana G. Mendez Educational Foundation is SET ASIDE.

7. IT IS FURTHER ORDERED, that, pursuant to Section 503(b) of the Act the Ana G. Mendez Educational Foundation FORFEIT to the United States the sum of three thousand dollars (\$3,000) for repeated violations of Section 399B of the Act and Section 73.621(e) of the Commission's Rules. Payment of the forfeiture may be made by mailing to the Commission, at the address indicated in the attachment to this Forfeiture Order, a check or similar instrument payable to the Federal Communications Commission. In regard to this forfeiture proceeding, the licensee may take any of the actions set forth in Section 1.80 of the Commission's Rules. See also, Sections 1.106 and 1.115 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart, Chief
Mass Media Bureau