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December 18, 2013

VIA HAND DELIVERY

Marlene H. Dortch

Secretary

Federal Communications Commission

445 12th Street SW

Washington, D.C. 20554

ATTN: Peter H. Doyle, Chief,

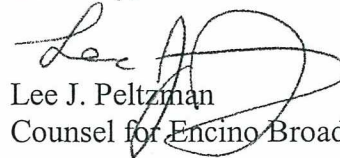
Audio Division, Media Bureau

Re: Encino Broadcasting, LLC
Stations KELG, Manor, Texas
KOKE, Pflugerville, Texas and
KTXZ, West Lake Hills, Texas
NAL/Acct. No. MB-201241410018
FRN: 0017558040

Dear Ms. Dortch:

Transmitted herewith, on behalf of Encino Broadcasting, LLC, licensee of Stations KELG, Manor, Texas, KOKE, Pflugerville, Texas and KTXZ, West Lake Hills, Texas is an original and two copies of its Response to Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture. Please contact undersigned counsel in the event the Commission has questions regarding this Response.

Sincerely,



Lee J. Peltzman

Counsel for Encino Broadcasting, LLC

Enclosures

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ACCEPTED/FILED

DEC 18 2013

Federal Communications Commission
Office of the Secretary

In re Applications of)	
)	
Encino Broadcasting, LLC)	NAL/Acct. No. MB-201241410018
)	FRN: 0017558040
For Renewal of Licenses for)	
)	
Station KELG(AM))	File No. BR-20130808AIG
Manor, Texas)	Facility ID No. 17807
)	
Station KOKE(AM))	File No. BR-20130808AIH
Pflugerville, Texas)	Facility ID No. 54662
)	
Station KTXZ(AM))	File No. BR-20130808AII
West Lake Hills, Texas)	Facility ID No. 59278

To: The Commission
ATTN: Peter H. Doyle, Chief, Audio Division, Media Bureau

**RESPONSE TO MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Encino Broadcasting, LLC (“Encino”), licensee of AM Stations KELG, Manor, Texas, KOKE, Pflugerville, Texas and KTXZ, West Lake Hills, Texas (the “Stations”) hereby responds to the November 18, 2013 Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (“NAL”) issued by the Audio Division, Media Bureau (the “Bureau”). The NAL was issued to Encino for apparent violations of Section 73.3539 of the Commission’s Rules and Section 301 of the Communications Act of 1934, as amended. The Bureau found Encino to be apparently liable for monetary forfeiture in the amount of eighteen thousand dollars (\$18,000.00). There are valid grounds for rescission or, at the very least, a reduction in the amount of the forfeiture. In support of Encino’s position, the following is submitted.

As the Commission has noted in its NAL, Section 73.3539(a) of the FCC's Rules requires that applications for renewal of license for broadcast stations should be filed no later than the first day of the fourth full calendar month prior to the expiration date of the license which is being renewed. In this case, applications for a renewal of Texas radio stations, including the Stations' licenses, should have been filed by April 1, 2013. Encino did not file renewal applications until August 8. On August 12, 2013 Encino filed requests for Special Temporary Authority ("STA") to continue those Stations' broadcast operations pending Bureau consideration of the Encino license renewal applications.

The Bureau concluded in the NAL that Encino had violated 73.3539(a) of the Commission's rules by filing its renewal applications late and had also violated Section 301 of the Communications Act because Encino had apparently engaged in unauthorized operation of its Stations after the authorizations for those Stations had expired on August 1. As noted above, Encino did not file its renewal applications until August 8 and did not seek STA's to continue operating its Stations until August 12.

The Bureau issued a forfeiture in the amount of \$18,000.00 (\$6,000.00 per station). It proposed a forfeiture of \$3,000.00 for each of the Stations for the failure to file a required renewal application on a timely basis. The Bureau also imposed a \$3,000.00 forfeiture on each of the Stations for the Stations' "two-week period of unauthorized operation."¹ This was considered a reduction in the amount of the normal forfeiture for unauthorized operation because the Stations were apparently guilty of a violation lasting only the "two-week period."

In reaching its conclusions, the Bureau reviewed Encino's explanation contained in its STA Requests that its sole owner and the manager of the Stations, Jose J. Garcia, Jr., had

¹ *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture*, DA 13-2205, released November 18, 2013 at para. 7.

suffered through a succession of serious and debilitating illnesses, resulting in a number of hospitalizations and visits to hospital emergency rooms since 2008, which explained, in large part, reasons he had not been able to attend fully to his broadcast duties to ensure that FCC filings were timely made. The Bureau apparently ignored Encino's explanation, instead concluding that "licensees are obligated to comply fully with the Rules, including filing a timely renewal application and maintaining in effect the station's authorization."² The Bureau cited earlier Commission cases standing for the proposition that the responsibility for compliance rests solely and exclusively with a station licensee.³

Encino does not contest the Bureau's conclusion that its Stations' renewal applications were filed late and that, as a result, the Stations broadcast, not for two weeks, but for eleven days after authority terminated. While this three day difference is not substantial in magnitude, it does constitute over 20% of a "two-week period." If the Bureau reduced the amount of the proposed forfeiture to \$3,000.00 on the theory that the station continued unauthorized operation for two weeks, then a period less than two weeks should amount to a 20% decrease in the \$3,000.00 forfeiture amounts to \$2,400.00.

In addition, Joe Garcia, Encino's owner and general manager, has been involved in broadcasting for over forty years and broadcast ownership since 1976. During that period, neither he nor any station he has been associated with has ever been issued a Commission forfeiture. Yet, the Bureau gives him no credit for this sterling record. While it is true that the Bureau does provide a \$4,000.00 reduction for one violation for a different reason, that forfeiture

² *I.d.* at para. 4.

³ *I.d.* at note 9.

reduction has absolutely nothing to do with the 20% reduction that the Commission has provided licensees in the past who had clean records.

Further, this is not a case in which the licensee and its owner simply “goofed” and failed to make a timely filing. Joe Garcia, manager of the Stations, who is the sole owner of Encino, has had a series of devastating illnesses over the past six years, which have reduced his ability to live and work a normal life. Asking the Commission to take these facts into its consideration of the amount of the forfeiture it will issue is not a matter which should be tossed aside lightly with only a formalistic comment as the Commission has done in its NAL. The Bureau’s description of Mr. Garcia’s medical condition at paragraph three of the NAL -- Mr. Garcia has “suffered through a succession of serious and debilitating illnesses...and has been hospitalized or been to hospital emergency rooms on a constant basis since 2008.”⁴ should be compared to the Bureau’s response, which in effect, is basically to state “You are seriously ill -- tough, you are still a Licensee and we will ignore all other facts and circumstances.”⁵

Not only has Joe Garcia had a near-perfect record of operating and managing broadcast stations, but there are abundant equitable reasons for limiting his liability for any violations occurring here. As explained by Mr. Garcia in the attached Statement, he has been seriously ill since at least February 2008. He has suffered from multiple diseases, any of which might sideline a person and affect his or her ability to operate at 100 percent efficiency without any violations of regulations. Mr. Garcia has had rheumatoid arthritis, which went into his lungs and intestines,

⁴ *I.d.* at para. 3.

⁵ *I.d.* at note 9. “Responsibility for complying with terms of station license ‘rests solely and exclusively with the licensee.’” *Citing Hemmingford Media, Inc.*, 14 FCC Rcd 2940, 2941-42 (CIB 1999). The *Hemmingford Media* case involved a licensee which sought to blame its violations on the actions of a part-time employee and an independent consultant. The Commission had every right in that case to state that the licensee was responsible for the acts and omissions of its employee and consultant and that the responsibility for complying with the terms of its license rested exclusively with the licensee. The same is hardly applicable in this case as Mr. Garcia who, prior to this case, had a sterling record of rule compliance, had a legitimate excuse for failing to properly file applications with the Commission.

thereby leading to BOOP/COP (Bronchiolitis Obliterans Organizing Pneumonia/Cryptogenic Organizing Pneumonia), a serious and life threatening lung disease, as well as an inability to digest food properly (Diverticulitis). The BOOP led to an attack of Secondary Adrenal Insufficiency, where his adrenal glands did not produce cortisol, a substance which is necessary in order to live. Mr. Garcia has been affected by low blood pressure at times as well as high blood pressure. When he has encountered low blood pressure, it has lead to vertigo and falls, such as the one he suffered earlier this year when he broke his leg and was hospitalized. He has repeatedly been hospitalized or been taken to emergency rooms for treatment over the last few years. Because of his pulmonary disorder, his lung capacity is barely 50 percent of what it should be. He also suffers from low testosterone, which has resulted in a loss of energy. He suffers from hypertension and hypotension, the latter of which is caused by his adrenal crisis.

Throughout this period, although suffering on a day-to-day basis from physical problems, Mr. Garcia has attempted to operate a business. Because of his inability to work full-time, however, sales and revenues have substantially decreased. Yet, he has done his best to see that his Stations broadcast in the public interest. Rather than be substantially penalized by a financial forfeiture of almost \$20,000.00, the Commission should consider the equities present here. It is not as simple as to say a licensee is responsible for what occurs at his or her station when that licensee and its owner, through no fault of his own, has done his best to fight the good fight and to live a normal life with life threatening illnesses.

Moreover, as referred to earlier, Encino is suffering financially as a result of Mr. Garcia's past inability to work on a full time basis. Attached are income tax returns for the past three years (the 2012 tax return has not yet been filed, but will be provided to the Commission when it is filed). These tax returns document the poor financial condition in which Encino finds itself.

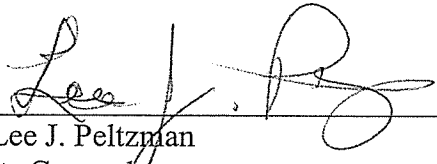
The Commission should consider the Encino financial condition when considering the equities of this case and what a fair forfeiture should be. Because Encino's returns contain confidential information, Encino seeks confidentiality regarding the amounts listed therein.

In view of the equities discussed above, there is a basis for cancelling any forfeitures and instead issuing an admonishment to Encino. Should the Commission decide that it still wishes to impose a forfeiture, the amount should be substantially reduced from the present \$18,000.00. Justice requires no less.

Respectfully submitted,

ENCINO BROADCASTING, LLC

By: _____


Lee J. Peltzman
Its Counsel

Shainis & Peltzman, Chartered
1850 M Street, N.W.
Suite 240
Washington, DC 20054

Date: December 18, 2013

STATEMENT

I, Jose J. Garcia, Jr., am the sole owner of Encino Broadcasting, LLC ("Encino"), licensee of AM Stations KELG, Manor, Texas, Station KOKE, Pflugerville, Texas and Station KTXZ, West Lake Hills, Texas. This Statement is made under penalty of perjury. I have reviewed the Response which precedes this Statement and can state that it is true and accurate to the best of my knowledge, information and belief.

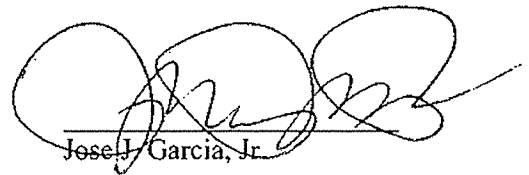
As explained in the Response, I have been involved in broadcasting for over forty years, both working at broadcast stations and owning such stations. In my career, neither I nor any station I have owned previously has been issued a Notice of Apparent Liability for Forfeiture by the Commission. I am proud of my broadcast record. It upsets me that in this case Encino failed to file renewal applications on a timely basis. However, this one failure is isolated. While I do not ask the Commission to ignore my violation, I think one violation in a broadcast career of over forty years of operation and ownership is not a bad record.

Also, as explained in detail in the attached Response, I have suffered from a series of debilitating illnesses since prior to February 2008 when BOOP/COP was diagnosed. Prior to that, I had pneumonia and rheumatoid arthritis, which led to my BOOP/COP lung disease. I have suffered from the illnesses described in the Response and included in the attached listing. My work days have often been interfered by my ailments, since I often have shortness of breath and an inability to digest food and must rest for periods of time. I have relied on others to take up the slack while I am not at the stations.

I do understand that, as owner of a licensee, I am responsible for the acts of anyone working at my stations. However, this is not a case where I went off for vacation or to play golf

and left inexperienced employees in charge. My goal is to work every day and to work a normal work day. When I cannot, I am not in a position to hire experienced professionals because of the drop in revenues which have adversely affected the finances of Encino stations since 2008. The combination of the long national recession affecting all stations as well as my inability to work a normal work week as General Manager of the stations has led to the stations' deteriorating financial condition. Being unable to hire a professional staff, I have had to rely on relatives, who have done their best, but who occasionally make mistakes. Moreover, because of my medical condition, I have not always been on top of the situation and able to correct those mistakes as quickly as I would under normal circumstances. The most obvious occurrence was the inability to file renewal applications on a timely basis and the resulting operation of the stations without authority for ten or eleven days.

Again, I do not ask that the Commission ignore these violations. I do ask that the Commission take into consideration my health problems during this period as well as my spotless broadcast background and the financial problems which Encino has incurred over the last few years.



Jose L. Garcia, Jr.

Date: December 18, 2013