

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

In re Application of)	
)	
QUETZAL BILINGUAL)	NAL/Acct. No. MB201641410005
COMMUNICATIONS, INC.)	FRN: 0004958930
)	Facility ID No. 54257
For Renewal of License for)	File No. BR-20130801APB
Station KURS(AM))	
San Diego, California)	

MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 19, 2016

Released: April 19, 2016

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application, as amended, (Application)¹ of Quetzal Bilingual Communications, Inc. (Licensee), for renewal of license for Station KURS(AM), San Diego, California (Station). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*,² we find that Licensee apparently willfully and repeatedly violated Sections 73.3526³ and 73.3615⁴ of the FCC's rules by failing to retain all required documentation in the Station's public inspection file and by failing to file certain Biennial Ownership Reports. Based upon review of the record before us, we conclude that Licensee is apparently liable for a monetary forfeiture in the amount of twelve thousand dollars (\$12,000) and that the captioned license renewal application should be granted for a period of four (4) years instead of a full term of eight years.

II. BACKGROUND

2. Section 73.3526 of the FCC's rules requires broadcast licensees to maintain a public inspection file containing specific types of information related to station operations. Among the materials required for inclusion in the file are the station's quarterly issues/programs lists, which must be retained until final Commission action on the station's next license renewal application.⁵

3. Section III, Item 3 of the license renewal application form requests that the licensee certify that the documentation required by Section 73.3526 has been placed in the station's public

¹ File No. BR-20130801APB, as amended on July 23, 2014 (July 2014 Amendment).

² This *NAL* is issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended (Act), and Section 1.80 of the FCC's rules. See 47 U.S.C. §§ 309(k), 503(b); 47 CFR § 1.80. The Bureau has delegated authority to issue the *NAL* under Section 0.283 of the FCC's rules. See 47 CFR § 0.283.

³ See 47 CFR § 73.3526.

⁴ See 47 CFR § 73.3615.

⁵ See 47 CFR § 73.3526(e)(8).

inspection file at the appropriate times. Licensee answered “No” to that certification and attached an exhibit explaining that: “upon review of the public file, the Licensee noted that the quarterly programs/problems reports were not filed when due. The Licensee is going back and creating these lists to bring the public file up to date.”⁶ In the July 2014, amendment, Licensee repeated that statement and reported that it “recreated these lists to bring the public file up to date. To the extent the information relating to the issues programs lists were [sic] available, the public file is up to date.”⁷ Despite repeated Commission staff requests for a detailed listing of the missing issues and programs that were re-created, Licensee has failed to provide this information.⁸

4. In addition, Section 73.3615 of the FCC’s rules requires commercial broadcast licensees to file an Ownership Report (FCC Form 323) when filing the Station’s application for renewal and every two years thereafter on the anniversary of the date its renewal application is due to be filed. Here, in the July 2014 Amendment, Licensee incorrectly certifies that all Biennial Ownership Reports had been filed.⁹ According to the Commission’s consolidated database, however, Licensee failed to file Biennial Ownership Reports for 2007, 2009 and 2011. Bureau staff have repeatedly requested that Licensee correct this erroneous certification, but to date Licensee has failed to do so.¹⁰

III. DISCUSSION

5. *Proposed Forfeiture.* As Licensee has acknowledged, issues and programs lists were not placed in the Station’s public inspection file when due as required by Section 73.3526 of the FCC’s rules. Where such lapses occur, neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee’s rule violation.¹¹ In addition, Licensee violated Section 73.3615 of the FCC’s rules by failing to file required Biennial Ownership Reports for the years 2007, 2009, and 2011.

⁶ Application, at Exhibit 12, as originally filed on August 1, 2013. In a March 10, 2014, email to a Bureau staff member Licensee’s former contact representative stated: “We were able to rebuild the 2005, 2006, the second quarter of 2007 along with the last quarter of 2013 after we went back on the air. The station during the other times was under LMA’s 2007 to 2012 to some [sic] that did not give any records to us Therefore, we were unable to rebuild the time periods that KURS was under the LMAs.” *Email from Allan Sotzsky to Kim Varner* (dated Mar. 10, 2014). In an April 10, 2014, amendment filed by Licensee’s former contact representative, Licensee stated that it recreated issues-programs lists for 2005, 2006, the second quarter of 2007 and the fourth quarter of 2013. On July 23, 2014, that amendment was dismissed at the request of Licensee’s current counsel. In requesting the amendment’s dismissal, an employee of Licensee’s current counsel informed a Bureau staff member that the amendment should be dismissed so that a “correct amendment” could be filed.

⁷ Application, as amended by the July 2014 Amendment, Exhibit 12.

⁸ On August 28, 2014, staff telephoned Licensee’s counsel to request an amendment listing the recreated issues and programs reports. On January 26, 2015, September 15, 2015, and October 20, 2015, staff renewed this request. *See email from Michael Wagner to Aaron Shainis* (dated Jan. 26, 2015); and *emails from Kim Varner to Aaron Shainis* (dated Sep. 15, 2015, and Oct. 20, 2015, respectively) (collectively, *The 2015 Staff Emails*). Thereafter, Licensee’s counsel committed to respond promptly to the staff requests. *See email from Aaron Shainis to Kim Varner* (dated Sep. 29, 2015). However, in the absence of any further contact or amendment filing, staff followed up with a series of emails, dated October 20, 2015, November 24, 2015, and February 19, 2016, and via voicemail on October 22, 2015. To date Licensee has failed to file the requested amendment.

⁹ Application, Section III, Question 1, as amended by the July 2014 Amendment. Previously, Licensee acknowledged this deficiency by stating “through inadvertence, the bi-ennial ownership reports for 2007, 9, and 11 were not filed.” Application, as originally filed on Aug. 1, 2013, Exhibit 9

¹⁰ Bureau staff informed Licensee’s current counsel, via electronic correspondence, that the revised certification was incorrect and requested that the Application be amended. *See The 2015 Staff Emails*. To date, Licensee has failed to make the correction.

¹¹ *See Padre Serra Commc’ns, Inc.*, Letter, 14 FCC Rcd 9709 (MMB 1999).

6. Under Section 503(b)(1)(B) of the Act, a person who is found to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹² 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.¹³ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹⁴ and the Commission has so interpreted the term in the Section 503(b) context.¹⁵ Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”¹⁶

7. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(5) of the FCC’s rules establish a base forfeiture amount of \$10,000 for a violation of Section 73.3526.¹⁷ In determining the appropriate forfeiture amount, we may adjust the amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including “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.”¹⁸

8. In this case, although Licensee admitted to violating Section 73.3526, it did so only in the context of the question contained in the Application that compelled such disclosure. Moreover, based on Licensee’s acknowledgement that “the quarterly programs/issues reports were not filed when due”¹⁹ the Station’s public file violations were extensive, and appear to have continued over nearly all of the license term.²⁰ Licensee has also admitted that the Station’s public file may still be deficient, as it is unclear which lists were re-created and what material was not “available” for the re-created file.²¹ In addition, Licensee violated Section 73.3615 of the FCC’s rules by failing to file three Biennial Ownership Reports. We further note that, over an 18-month period of time, the Bureau has repeatedly and unsuccessfully requested information from Licensee detailing certain factual information concerning the public file violations as well as correcting the erroneous Biennial Ownership Report certification, but Licensee has

¹² 47 U.S.C. § 503(b)(1)(B). See also 47 CFR § 1.80(a)(1).

¹³ 47 U.S.C. § 312(f)(1).

¹⁴ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁵ See *Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para.5 (1991).

¹⁶ 47 U.S.C. § 312(f)(2).

¹⁷ See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15, Appendix A, Section I (1997) (*Forfeiture Policy Statement*), recon. denied, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(4), note to paragraph (b)(4), Section I.

¹⁸ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-17101, para. 27; 47 CFR § 1.80(b)(4).

¹⁹ Application, as amended by the July 2014 Amendment, Exhibit 12.

²⁰ No issues-programs lists were required to be filed from October 25, 2012, until October 17, 2013, when the Station was silent with Commission authorization. See File No. BLSTA-20121126AKU.

²¹ Licensee noted that its ability to recreate the lists was limited “to the extent the information relating to the issues programs lists were [sic] available” Application, as amended by the July 2014 Amendment, Exhibit 12. As noted above, we are unable to determine the specific lists that were recreated because Licensee has ignored multiple Bureau requests for additional factual information.

failed to do so.²² The Commission has opined that “without such licensee cooperation, the Commission’s ability to regulate effectively is seriously undermined.”²³ Here, Licensee’s failure to respond to the Bureau’s multiple inquiries impeded and protracted the Bureau’s review of the Application. Accordingly, we find that, considering the record as a whole, a \$12,000 forfeiture is appropriate for the violations in this case.²⁴

9. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act.²⁵ That section provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the FCC’s rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.²⁶ If, however, the licensee fails to meet that standard, the Commission may deny the application — after notice and opportunity for a hearing under Section 309(e) of the Act — or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”²⁷

10. It is clear to us that Licensee’s conduct has fallen far short of the standard of compliance with the Act and the FCC’s rules that would warrant a routine license renewal. Licensee apparently failed to timely prepare and file issues-programs lists for nearly all of the license period and to file three required Biennial Ownership Reports. In addition, Licensee has ignored repeated Bureau entreaties to file an amendment to the Application correcting the erroneous Biennial Ownership Report Certification and providing additional factual details regarding the recreated issues-programs lists. The issues-programs lists are a significant and representative indication that a licensee is providing substantial service to meet the needs and interests of its community.²⁸ The Commission’s public information file rule also safeguards the public’s ability to assess the station’s service and to meaningfully participate in 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.²⁹ As such, the public information requirements are integral components of a licensee’s obligation to serve the public interest and meet its community service obligations.

²² Licensees are required to respond to Commission requests for information relevant to a determination on matters within the Commission’s jurisdiction. See 47 CFR §§ 1.17, 73.1015; see also *Peninsula Commc’ns, Inc.*, 16 FCC Rcd 16124, 16128, para. 15 (2001) (subsequent history omitted); and *SBC Commc’ns, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7595, para. 14 (2002) (*SBC*).

²³ *Radio Moultrie, Inc.*, Order to Show Cause and Notice of Opportunity for Hearing, 17 FCC Rcd 24304, 24307-24308, para. 12 (2002).

²⁴ See *SBC*, 17 FCC Rcd at 7599-7600, paras. 23-28 (2002) (imposing \$100,000 forfeiture for willful refusal to supply a sworn declaration in response to an Enforcement letter of inquiry); and *Carrera Commc’ns, L.P.* Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd 13307, 13319, para. 13 (2005) (subsequent history omitted) (proposing \$8,000 forfeiture for failure to respond to an LOI as part of a larger total proposed forfeiture for other violations).

²⁵ 47 U.S.C. § 309(k).

²⁶ 47 U.S.C. § 309(k)(1).

²⁷ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²⁸ See *Formulation of Policies and Rules to Broadcast Renewal Applicants*, Third Further Notice of Inquiry and Notice of Proposed Rule Making, 4 FCC Rcd 6363, 6365, para. 17 (1989).

²⁹ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17104-05, para.39.

11. We believe that Licensee's violations, particularly of Section 73.3526, were "serious" violations,³⁰ as they denied both the public and the Commission any opportunity to review and comment on the Station's programming during the past license term. The record here further indicates that Licensee's willful and repeated violations of Sections 73.3526 and 73.3615 at the Station, when considered together, constitutes a pattern of abuse over a period of years by Licensee.³¹ We also find that Licensee has exacerbated the violations by ignoring repeated staff requests to file a corrective amendment to the Application. However, although we are concerned with Licensee's failure to file required Biennial Ownership Reports, to create and retain quarterly issues-programs lists, and respond to Bureau requests for a corrective amendment, we find that Licensee's violations of the FCC's rules do not rise to such a level that designation for evidentiary hearing on the issue of whether to deny renewal for the Station is warranted.³²

12. On the facts presented here, we conclude that a short-term license renewal is the appropriate sanction. We believe that additional measures are necessary in order to ensure that Licensee endeavors in the future to provide the broadcast service it is licensed to provide and comply with its obligations as a licensee. Accordingly, pursuant to Section 309(k)(2) of the Act, we will grant the Station a short-term license renewal by separate action upon the conclusion of this forfeiture proceeding, if there are no issues other than the apparent violations addressed herein that would preclude such a grant of the Application.³³ The new license term will be limited to a period of four years.³⁴ This limited renewal period will afford the Commission an opportunity to review the Station's compliance with the Act and the FCC's rules and to take whatever corrective actions, if any, that may be warranted at that time.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the FCC's rules, that Quetzal Bilingual Communications, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of twelve thousand dollars (\$12,000) for its apparent willful and repeated violations of Section 73.3526 of the FCC's Rules.

14. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the FCC's rules, that, within thirty (30) days of the release date of this NAL, Quetzal Bilingual Communications, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

15. Payment of the proposed forfeiture must be made by check or similar instrument, wire transfer or credit card, and must include the NAL/Acct. No. and FRN No. referenced herein. Regardless

³⁰ See 47 U.S.C. § 309(k)(1)(b).

³¹ See 47 U.S.C. § 309(k)(1)(c).

³² We do not find that Licensee's operation of the Station "was conducted in an exceedingly careless, inept and negligent manner and that Licensee is either incapable of correcting or unwilling to correct the operating deficiencies." *Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198, para 6 (1971). Nor do we find on the record here that "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Id.* at 200, para. 10.

³³ See 47 U.S.C. § 309(k)(2).

³⁴ See, e.g., *Icicle Broad., Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 28 FCC Rcd 13847 (MB 2014) (four-year renewal granted and \$12,000 NAL issued for failing to prepare 20 issues-programs lists during the license term).

of the form of payment, a completed FCC Form 159 must be submitted. When 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). Licensee will also send electronic notification on the date said payment is made to Penelope.Dade@fcc.gov and Kim.Varner@fcc.gov. Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2- GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

16. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington DC 20554, ATTN: Peter H. Doyle, Chief, Audio Division, Media Bureau, and MUST INCLUDE the NAL/Acct. No. referenced above.

17. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

18. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, DC 20554.³⁵

19. IT IS FURTHER ORDERED that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to the Licensee, Mr. Jaime Bonilla Valdez, Quetzal Bilingual

³⁵ See 47 CFR. § 1.1914.

Communications, Inc., 296 H Street, Suite 300, Chula Vista, CA 91910 and to Licensee's counsel, Aaron P. Shainis, Esq., Shainis & Peltzman, Chartered, 1850 M Street, N.W., Suite 240, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau