

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

In the Matter of)	
)	File No. EB-04-SD-033
Farmworker Educational Radio Network, Inc.)	
)	NAL/Acct. No. 200432940001
Licensee of FM Station KRIT)	
Parker, Arizona)	FRN 0006911291
Facility ID # 88674)	

FORFEITURE ORDER

Adopted: September 2, 2005

Released: September 8, 2005

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000) to Farmworker Educational Radio Network, Inc. (“Farmworker”) for willful and repeated violation of Section 73.1125(a) and (e) of the Commission’s Rules (“Rules”).¹ The noted violation involves Farmworker’s failure to maintain a local main studio and a public phone number in its community of license.

II. BACKGROUND

2. On February 9, 2004, a field agent from the Commission’s San Diego Office attempted to conduct a routine inspection of FM Station KRIT in Parker, Arizona. The field agent discovered that there was neither a studio address nor telephone listing for KRIT. A contact person for KRIT was ultimately found through inquiries with other broadcasters in the area and an inspection was scheduled at the KRIT transmitter site. On February 12, 2004, the field agent met with an engineer for KRIT. The engineer advised the field agent that the transmitter site had served as KRIT’s studio since the station began operations on December 15, 2002. The field agent observed that the transmitter site was located on a dirt road off a main street, was surrounded by a locked chain-link fence, and that there were signs posted on the fence to warn the public not to approach because of exposure to electromagnetic radiation. The field agent found no means by which the public could access the site. Inside the windowless transmitter building, the field agent observed that it contained, besides the transmitter itself, only a single desk and chair. There were no restroom facilities, nor was there any staff present at the site. According to the KRIT engineer, staff from the licensee rarely visited the site, except for maintenance of the transmitter and Emergency Alert System equipment. The engineer also confirmed that no local or toll-free telephone number existed for the station. On February 20, 2004, a Farmworker executive

¹47 C.F.R. § 73.1125(a),(e).

acknowledged that KRIT needed a local studio and a local phone number.²

3. On July 30, 2004, the San Diego Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Farmworker in the amount of seven thousand dollars (\$7,000) for the apparent willful and repeated violation of Section 73.1125(a) and (e) of the Rules.³ Farmworker filed a *Response* to the NAL on August 30, 2004.⁴ In its *Response*, Farmworker states that it had established the main studio for KRIT at the KRIT transmitter site but that Section 73.1125 of the Rules does not require that it maintain a meaningful staff presence at the studio, nor is there any provision in Section 73.1125 that requires “a management and staff presence on a full-time basis during normal business hours to be considered meaningful, nor is there a requirement that they must report to work at the main studio on a daily basis, spend a substantial amount of time there, and use the studio as a home base.”⁵ In addition, Farmworker states that it was unable to obtain either a local or toll-free telephone number due to an ongoing dispute between the local telephone company and the tribe which owns the KRIT studio/transmitter site. Farmworker argues that, for these reasons, the NAL be rescinded and cancelled.

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁶ Section 1.80 of the Commission’s Rules (“Rules”),⁷ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Red 17087 (1997), recon. denied, 15 FCC Red 303 (1999) (“*Forfeiture Policy Statement*”). In examining Farmworker’s response, Section 503(b) 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.⁸

5. Section 73.1125(a) of the Rules requires the licensee of a broadcast station to maintain a main studio at one of the following locations: (1) within the station’s community of license; (2) at any location within the principal community contour of any AM, FM or TV broadcast station licensed to the station’s community of license; or (3) within twenty-five miles from the reference coordinates of the center of its community of license as described in Section 73.208(a)(1).⁹ In addition, the station’s main studio must serve the needs and interests of the residents of the station’s community of license. To fulfill this function, a station must, among other things, maintain a meaningful managerial and staff presence at

²Farmworker is also the licensee of KCEC-FM in Wellton, Arizona. The main studio for that station is over one hundred miles from Parker, Arizona.

³*Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200432940001 (Enf. Bur., Western Region, San Diego Office, July 30, 2004).

⁴Response of Farmworker Education Radio Network, Inc., filed August 30, 2004 (“*Response*”).

⁵*Response* at 2.

⁶47 U.S.C. § 503(b).

⁷47 C.F.R. § 1.80.

⁸47 U.S.C. § 503(b)(2)(D).

⁹47 C.F.R. § 73.208(a)(1).

its main studio.¹⁰ The Commission has defined a minimally acceptable “meaningful presence” as full-time managerial and full-time staff personnel.¹¹ In addition, there must be “management and staff presence” on a full-time basis during normal business hours to be considered “meaningful.”¹² Although management personnel need not be “chained to their desks” during normal business hours, they must “report to work at the main studio on a daily basis, spend a substantial amount of time there and . . . use the studio as a home base.”¹³

6. Farmworker does not dispute the fact that the site it held out as the main studio location for KRIT had no public access and no staff presence. Instead, Farmworker argues that Section 73.1125 contains no staffing requirements and that the staffing requirements detailed in the *NAL* are contained in “various Reports & Orders” issued by the Commission.¹⁴ Farmworker asserts that those Reports & Orders did not amend Section 73.1125 and while the “Commission is free to interpret its Rules, . . . [the] Commission’s forfeiture authority is limited by the Communications Act to Rule violations.”¹⁵ Further, Farmworker argues that before a Rule can be amended, the Commission must issue a Notice of Proposed Rulemaking which must be published in the Federal Register and must be made available for public comment. Farmworker asserts that at “no time in any of the various proceedings involving the Reports & Orders did the Commission even attempt to amend the Rule . . .”¹⁶

7. We disagree with Farmworker. In adopting main studio rules, the Commission explicitly informed permittees and licensees that compliance with those rules required maintenance of a meaningful staff and management presence.¹⁷ Specifically, the Commission stated:

A station must maintain a main studio which has the capability adequately to meet its function, as discussed above, of serving the needs and interests of the residents of the station's community of license. To fulfill this function, a station must equip the main studio with production and transmission facilities that meet applicable standards, maintain continuous program transmission capability, and maintain a meaningful management and staff presence. Maintenance of production and transmission capability will allow broadcasters to continue, at their option, and as the marketplace demands, to produce local programs at the studio. A meaningful management and staff presence will help expose stations to community activities, help them identify community needs

¹⁰See *Main Studio and Program Origination Rules*, 2 FCC Rcd 3215, 3217-18 (1987), *clarified* 3 FCC Rcd 5024, 5026 (1988).

¹¹*Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 (1991), *clarified* 7 FCC Rcd 6800 (1992) (“*Jones Eastern Cases*”).

¹²*Id.*

¹³7 FCC Rcd at 6802.

¹⁴*Response* at 2.

¹⁵*Response* at 2.

¹⁶*Response* at 3.

¹⁷*Main Studio and Program Origination Rules*, 3 FCC Rcd 5024 (1988).

and interests and thereby meet their community service requirements.¹⁸

Consequently, the rules, as clarified, do contain a staffing component, *i.e.*, maintenance of a meaningful management and staff presence.¹⁹ In addition, despite Farmworker's assertion that it need not follow the interpretations of the "various Reports & Orders" concerning Section 73.1125, we note that Section 0.445 of the Rules states that Commission decisions, which are published in the FCC Record and which contain substantive interpretations, "may be relied upon, used or cited as precedent by the Commission or private parties in any manner."²⁰ Consequently, we find Farmworker's argument to be meritless.

8. Section 73.1125(e) requires every broadcast station to maintain a local or a toll-free telephone number in its community of license.²¹ An investigation by a Commission field agent showed that there was no listing for a local or a toll-free number for KRIT in the local phone listings. Again, Farmworker does not dispute the fact that it did not maintain a local or toll-free telephone number for the station, but asserts that it was unable to do so due to an ongoing dispute between the local telephone company and the tribe which owns the station's studio/transmitter site. Farmworker argues that the Farmworker executive who spoke with the San Diego agent, to the best of his recollection, told the San Diego agent about the station's "problem of not being able to get a telephone line to the site . . ."²² Farmworker's inability to procure a phone line to the main studio/transmitter site does not negate Farmworker's responsibility to maintain a local or toll-free telephone *number* in KRIT's community of license. In addition, a review of Commission records, and the KRIT public inspection file, revealed that as of the date of issuance of the *NAL*, Farmworker had not filed for, nor received, a waiver of any of the requirements of Section 73.1125, including the requirement that the station maintain a local or toll-free telephone number in the community of license. Consequently, we find this argument to be meritless as well.

9. We have examined Farmworker's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Farmworker willfully and repeatedly violated Section 73.1125 of the Rules. Considering the entire record and the factors listed above, we find that neither reduction nor cancellation of the proposed \$7,000 forfeiture is warranted.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,²³ Farmworker Educational Radio Network, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of seven thousand dollars (\$7,000) for willfully and repeatedly violating Section 73.1125(a) and (e) of the Commission's Rules.

¹⁸Main Studio and Program Origination Rules, 3 FCC Red 5024, ¶24 (footnotes omitted).

¹⁹The Commission further elaborated on the requirement of a "meaningful management and staff presence" in the *Jones Eastern Cases*, cited above.

²⁰47 C.F.R. § 0.445(e).

²¹47 C.F.R. § 73.1125(e).

²²Response at 3.

²³47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

11. Payment of the 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.²⁴ Payment of the 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 above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911- 6106. 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. 20554.²⁵

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Farmworker Educational Network, Inc., 4600 Ashe Road, Suite 313, Bakersfield, California 93313 and to Anne Thomas Paxson, Esquire, Borsari and Paxson, 4000 Albemarle Street, N.W., Suite 100, Washington, D.C., 20016. Additionally, a copy of this *Order* shall be sent by regular mail to Farmworker Educational Network, Inc., 6313 Scherra Court, Bakersfield, California 93313.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

²⁴47 U.S.C. § 504(a).

²⁵See 47 C.F.R. § 1.1914.