

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

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

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: July 30, 2004

By the District Director, San Diego Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Farmworker Educational Radio Network, Inc. (“Farmworker”), the licensee of FM Station KRIT in Parker, Arizona, apparently willfully and repeatedly violated Section 73.1125(a) and (e) of the Commission’s Rules (“Rules”),¹ by failing to maintain a local main studio and a public phone number in its community of license. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),² that Farmworker is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000).

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.

3. 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, no staff from the licensee ever 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

¹47 C.F.R. § 73.1125(a),(e).

²47 U.S.C. § 503(b).

public to contact KRIT or to arrange to view the public inspection file, which was maintained at the transmitter site.³ On February 20, 2004, an executive from the licensee acknowledged that KRIT needed a local studio and a local phone number.⁴

III. DISCUSSION

4. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁵ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁶

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).⁷ 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 its main studio.⁸ The Commission has defined a minimally acceptable "meaningful presence" as full-time managerial and full-time staff personnel.⁹ In addition, there must be "management and staff presence" on a full-time basis during normal business hours to be considered "meaningful."¹⁰ 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."¹¹ The site held out by Farmworker as the main studio location for KRIT had no public access and no staff presence. An executive of the licensee later admitted to a Commission field agent that KRIT needed a studio, therefore, the violation was willful. The failure to maintain a main studio occurred on more than one day, therefore, it was repeated.

³The field agent was informed that a copy of the public file was also located at the City of Parker Public Library.

⁴Farmworker is also the licensee of KCEC-FM in Wellton, Arizona. The main studio for that station is over one hundred miles from Parker, Arizona.

⁵Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁶Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) 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."

⁷47 C.F.R. § 73.208(a)(1).

⁸See *Main Studio and Program Origination Rules*, 2 FCC Rcd 3215, 3217-18 (1987), clarified 3 FCC Rcd 5024, 5026 (1988).

⁹*Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 (1991), clarified 7 FCC Rcd 6800 (1992).

¹⁰*Id.*

¹¹7 FCC Rcd at 6802.

6. Section 73.1125(e) requires every broadcast station to maintain a local or a toll-free telephone number in its community of license.¹² 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. An executive for the licensee acknowledged that a local phone number was required, therefore, the violation was willful. The failure to obtain a local or toll-free telephone for KRIT occurred on more than one day, therefore, it was repeated.

7. Based on the evidence before us, we find that Farmworker, apparently willfully and repeatedly violated Section 73.1125(a) and (e) of the Rules, by failing to maintain a local main studio and failing to maintain a local phone number in its community of license or a toll-free number.

8. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"), and Section 1.80 of the Rules, the base forfeiture amount for failing to comply with the main studio requirements, is \$7,000.¹³ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation(s), 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.¹⁴ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors, a \$7,000 forfeiture is warranted.

IV. ORDERING CLAUSES

9. 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 of the Commission's Rules, Farmworker Educational Radio Network Inc., is hereby NOTIFIED of their APPARENT LIABILITY FOR A FORFEITURE in the amount of seven thousand dollars (\$7,000) for violating Section 73.1125(a) and (e) of the Commission's Rules.¹⁵

10. IT IS FURTHER ORDERED that, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Farmworker Educational Radio Network, Inc., shall pay the full amount of the proposed forfeiture or shall file a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN) and the NAL/Acct. No. referenced in the caption.

12. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, San Diego Office, 4542 Ruffner Street – Suite 370, San Diego, California 92111 and must include the NAL/Acct. No. referenced in the caption.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period;

¹²47 C.F.R. § 73.1125(e).

¹³12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹⁴47 U.S.C. § 503(b)(2)(D).

¹⁵47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80, 73.1125(a),(e).

(2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner'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.

14. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Chief, Revenue and Receivable Operation Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁶

15. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the address listed above for the filing of the response. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

16. IT IS FURTHER ORDERED that this Notice of Apparent Liability for Forfeiture shall be sent, by Certified Mail, Return Receipt Requested, and regular mail, to Farmworker Educational Network, Inc., 4600 Ashe Road, Suite 313, Bakersfield, California 93313. Additionally, a copy of this Notice of Apparent Liability for Forfeiture shall be sent by regular mail to Farmworker Educational Network, Inc., 6313 Scherra Court, Bakersfield, California 96613.

FEDERAL COMMUNICATIONS COMMISSION



William R. Zears Jr.
District Director
San Diego Office
Western Region
Enforcement Bureau

Enclosure: FCC List of Small Entities

¹⁶See 47 C.F.R. § 1.1914.