

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

In the Matter of	)	
	)	
Del Rosario Talpa, Inc.	)	File Number: EB-06-SF-198
	)	
Licensee of Station KNCR(AM)	)	NAL/Acct. No.: 200732960002
Fortuna, California	)	FRN: 0013789524
Facility ID # 39472	)	

FORFEITURE ORDER**Adopted: June 15, 2007****Released: June 19, 2007**

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 three thousand, two hundred dollars (\$3,200) to Del Rosario Talpa, Inc. ("Del Rosario Talpa"), licensee of AM broadcast station KNCR, in Fortuna, California, for willfully and repeatedly violating Section 73.1350(a) of the Commission's Rules ("Rules").¹ On December 22, 2006, the Enforcement Bureau's San Francisco Office issued a *Notice of Apparent Liability for Forfeiture* ("NAL") in the amount of \$4,000 to Del Rosario Talpa for operating station KNCR at an unauthorized location.² In this *Order*, we consider Del Rosario Talpa's arguments that its violation was actually of Section 73.1680 of the Rules; that Del Rosario Talpa will have financial difficulty paying the forfeiture amount; and that the forfeiture amount should be reduced based on Del Rosario Talpa's history of compliance with the Commission's Rules.

II. BACKGROUND

2. On August 22, 2006, in response to a complaint, an agent from the Enforcement Bureau's San Francisco Office monitored KNCR's signal on frequency 1090 kHz in Fortuna, California. Using radio direction finding equipment, the agent traced the source of KNCR's broadcast signal to an antenna located at 2200 Smith Lane, Fortuna, California. Later that day, the agent conducted an inspection of the KNCR studio. The inspection of the KNCR studio at 2200 Smith Lane revealed that KNCR was transmitting from that location.

3. According to KNCR's license, the KNCR transmitter should be located at 3560 Hillras Way, Fortuna, California, with coordinates of 40° 33' 30" north latitude, 124° 07' 24" west longitude.³ The San Francisco agent's inspection revealed that the coordinates of the current location of the KNCR transmitter at 2200 Smith Lane, Fortuna, California, are approximately 40° 35' 32" north latitude and 124° 08' 40" west longitude, approximately two miles from its authorized location.

¹ 47 C.F.R. § 73.1350(a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732960002 (Enf. Bur., Western Region, San Francisco Office, released December 22, 2006).

³ On August 22, 2006, the agent attempted to inspect the KNCR main antenna location at 3560 Hillras Way, Fortuna, California and observed that the transmitting antenna was not constructed at this geographic location.

4. On October 16, 2006, after being contacted by the San Francisco agent concerning the unlicensed KNCR location, the KNCR consulting engineer informed the agent that KNCR had been operating its transmitter from the 2200 Smith Lane location since November 6, 2005. The consulting engineer also informed the agent that KNCR was in the process of filing for a Special Temporary Authority ("STA") from the Commission to use that location.⁴

5. On December 22, 2006, the San Francisco Office issued a *NAL* in the amount of \$4,000 to Del Rosario Talpa, finding that Del Rosario Talpa had apparently willfully and repeatedly operated KNCR from an unauthorized location. Del Rosario Talpa filed a response ("*Response*") on February 20, 2007, arguing that the only violation committed by Del Rosario Talpa was its failure to notify the Commission within 24 hours of beginning operation with emergency facilities. Del Rosario Talpa also argues that it will have financial difficulty paying the forfeiture amount; and that the forfeiture amount should be reduced based on its history of compliance.⁵ Finally, Del Rosario Talpa states that it requested an STA to operate from its current location on October 24, 2006 and that this STA was granted on November 7, 2006.

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁶ Section 1.80 of the Rules,⁷ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("*Forfeiture Policy Statement*").⁸ In examining Del Rosario Talpa'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.⁹

7. Section 73.1350(a) of the Commission's rules states "[e]ach licensee is responsible for maintaining and operating its broadcast station in a manner which complies with the technical rules . . . and in accordance with the terms of the station authorization."¹⁰ On August 22, 2006, the San Francisco agent observed that KNCR was transmitting from a location that was not authorized on the KNCR license. KNCR staff informed the San Francisco agent that the station had been transmitting from that location since November, 2005. Since the agent's inspection and inquiry, Del Rosario Talpa, Inc., has filed for and received an STA for KNCR. We note, as the San Francisco Office stated in the *NAL* that the Commission has stated in the past that a licensee is expected to correct errors when they are brought to the licensee's attention and that such correction is not grounds for a downward adjustment in the forfeiture.¹¹

8. Del Rosario Talpa states that it moved the KNCR transmitter when the station was

⁴ On November 7, 2006, the STA application, File No. BSTA - 20061024AGJ, was granted by the Media Bureau. This STA expired on May 7, 2007. Del Rosario Talpa filed for an extension of the STA on May 18, 2007, File No. BSTA - 20070501AHT.

⁵ Del Rosario Talpa requested and received a 30 day extension to respond to the *NAL*.

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁹ 47 U.S.C. § 503(b)(2)(E).

¹⁰ 47 C.F.R. § 73.1350(a).

¹¹ *AT&T Wireless Services, Inc.* 17 FCC Rcd 21866, 21871-76 (2002).

evicted on short notice from its licensed site. It consequently set up an "emergency antenna" and therefore argues that its violation, if any, was not of Section 73.1350(a) of the Rule, but of 73.1680 of the Rules. Section 73.1680 defines an "emergency antenna" as "one that is erected for temporary use after the authorized main and auxiliary antennas are damaged and cannot be used."¹² The Rule also states that "[p]rior authority from the FCC is not required by licensees and permittees to erect and commence operations using an emergency antenna to restore program service to the public. However, an informal letter request to continue operation with the emergency antenna must be made with in 24 hours to the FCC"¹³ Rosario Del Talpa acknowledges that it did not send notice to the FCC within 24 hours of beginning its use of its emergency antenna, therefore, we agree that Rosario Del Talpa's actions violated Section 73.1680 of the Rules. However, we find that Rosario Del Talpa never gave notice to the Commission concerning the new location of its station, until the station was inspected by the San Francisco agent on August 22, 2006. Therefore, Rosario Del Talpa's continued operation from an unauthorized location for a period of over nine months also resulted in a violation of Section 73.1350(a) of the Rules. Rosario Del Talpa also argues that it should not be liable for a forfeiture because its operation from the temporary location provides no competitive benefit. We disagree. Operation consistent with the terms of one's license is fundamental to the privilege of holding a license.¹⁴

9. Rosario Del Talpa also states that it will have financial difficulty paying the proposed forfeiture amount. Despite being given repeated extensions of time to produce financial data to support this claim, Rosario Del Talpa has failed to submit any financial data.¹⁵ In analyzing a financial hardship claim, the Commission generally has looked to gross revenues as a reasonable and appropriate yardstick in determining whether a licensee is able to pay the assessed forfeiture.¹⁶ Because Rosario Del Talpa has submitted no data to support its claim, we are unable to consider it.

10. Rosario Del Talpa also states that it has a history of compliance with the Commission's Rules. We have reviewed our records and we concur. Consequently, we reduce Rosario Del Talpa's forfeiture amount from \$4,000 to \$3,200.

11. Based on the information before us, having examined it according to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*, we find that reduction of the proposed forfeiture to \$3,200 is warranted.

IV. ORDERING CLAUSES

12. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Rosario Del Talpa, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$3,200 for willfully and repeatedly violating Section 73.1350(a) of the Rules.¹⁷

13. 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,

¹² 47 C.F.R. § 73.1680(a).

¹³ 47 C.F.R. § 73.1680(b).

¹⁴ See, e.g., *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969).

¹⁵ In its *Response*, Rosario Del Talpa stated that it would supplement its filing with financial data. No supplemental filing was ever received.

¹⁶ See *PLB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992).

¹⁷ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.1350(a).

the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁸ 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: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.¹⁹

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Rosario Del Talpa, Inc., at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

¹⁸ 47 U.S.C. § 504(a).

¹⁹ See 47 C.F.R. § 1.1914.