

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

In the Matter of)	
)	
Onda Mexicana Radio Group, Inc.)	File No.: EB-FIELDSCR-12-00004836
)	NAL/Acct. No.: 201432700004
Licensee of AM station WWFL, Clermont, FL)	Facility ID No.: 33215
)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: January 28, 2014

Released: January 28, 2014

By the District Director, Tampa Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Onda Mexicana Radio Group, Inc. (Onda Mexicana), licensee of AM Station WWFL, Clermont, Florida, apparently willfully and repeatedly violated Section 1.89(b) of the Commission's rules (Rules)¹ by failing to fully respond to a Bureau-issued Notice of Violation (*NOV*).² We conclude that Onda Mexicana is apparently liable for a forfeiture in the amount of eight thousand dollars (\$8,000). In addition, we direct Onda Mexicana to submit a complete response to the *NOV*, signed under penalty of perjury, within ten (10) calendar days from the release date of this NAL. Onda Mexicana's failure to provide a complete response within ten days may result in further enforcement action.

II. BACKGROUND

2. On October 22, 2012, the Enforcement Bureau's Tampa Office (Tampa Office) issued an *NOV* to Onda Mexicana for violations found during inspections of AM Station WWFL that were conducted in the summer of 2012.³ As reflected in the *NOV*, Onda Mexicana was required to submit specific information and responses to the listed violations (including any corrective actions taken) on or before November 12, 2012. Although Onda Mexicana received and signed for the *NOV* on October 24, 2012—thereby confirming receipt of the *NOV*—it failed to submit a response.

3. On January 16, 2013, during a partial re-inspection of Station WWFL, Onda Mexicana provided agents from the Tampa Office a copy of a response to the *NOV* that was dated November 1, 2012, which it claimed was mailed to the Tampa Office.⁴ The agents told Onda Mexicana that the response was never received by the Tampa Office and that, in any event, the response was insufficient because it did not address each of the violations raised in the *NOV*. The agents directed Onda Mexicana

¹ 47 C.F.R. § 1.89(b).

² *Onda Mexicana Radio Group, Inc.*, Notice of Violation, V201332700003 (Oct. 22, 2012) (on file in EB-FIELDSCR-12-00004836) (*NOV*).

³ *Id.* at 1-2.

⁴ See Letter from Oscar Pineda, Owner, Onda Mexicana Radio Group, Inc., to Ralph Barlow, District Director, Tampa Office (Nov. 1, 2012) (on file in EB-FIELDSCR-12-00004836).

to submit a complete response to the *NOV* within seven days. Onda Mexicana, however, failed to submit a complete response by the prescribed deadline.

4. On March 1, 2013, the Tampa Office sent a letter to Onda Mexicana stating that a failure to respond to an *NOV* is a separate offense that could result in enforcement action, and that its response to the *NOV* must be received within ten days.⁵ Onda Mexicana requested a 30-day extension of time to respond to the *NOV*,⁶ which the Tampa Office granted.⁷ Onda Mexicana failed to file a response even after receiving a 30-day extension. Thereafter, the Tampa Office issued a second letter on April 24, 2013, directing Onda Mexicana to respond to the *NOV* within five days, and also warning Onda Mexicana that the letter served as final notice that monetary forfeitures may be imposed if a full response, as requested, was not received by the deadline.⁸ Onda Mexicana received the letter on April 26, 2013,⁹ but it did not file anything by the due date nor contact the Tampa Office to offer any explanation for its failure to file. As of the release date of this NAL, Onda Mexicana has not submitted a complete response to the *NOV*.

III. DISCUSSION

5. Section 503(b) of the Communications Act of 1934, as amended (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.¹⁰ 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.¹¹ 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,¹² and the Commission has so interpreted the term in the Section 503(b) context.¹³ The Commission may also assess a forfeiture for

⁵ See Letter from Ralph Barlow, District Director, Tampa Office, to Onda Mexicana Radio Group, Inc. (Mar. 1, 2013) (on file in EB-FIELDSCR-12-00004836) (directing Onda Mexicana to respond to the *NOV* within ten days of receipt of letter).

⁶ See Letter from Oscar Pineda, Owner, Onda Mexicana Radio Group, Inc., to Ralph Barlow, District Director, Tampa Office (filed Mar. 11, 2013) (on file in EB-FIELDSCR-12-00004836) (requesting a 30-day extension).

⁷ See Letter from Ralph Barlow, District Director, Tampa Office, to Onda Mexicana Radio Group, Inc. (Mar. 20, 2013) (granting extension until April 17, 2013).

⁸ Letter from Ralph M. Barlow, District Director, Tampa Office, to Onda Mexicana Radio Group, Inc. (Apr. 24, 2013) (on file in EB-FIELDSCR-12-00004836) (directing Onda Mexicana to respond to the *NOV* within five days of receipt of letter).

⁹ See www.usps.com (track and confirm function) (last visited May 22, 2013).

¹⁰ 47 U.S.C. § 503(b).

¹¹ 47 U.S.C. § 312(f)(1).

¹² H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in Section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission’s application of those terms . . .”).

¹³ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

violations that are merely repeated, and not willful.¹⁴ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁵

A. Failure to Fully Respond to an NOV

6. The record evidence in this case establishes that Onda Mexicana, a broadcast licensee, violated Section 1.89 of the rules by refusing to fully respond to a Bureau-issued NOV. Section 1.89(b) of the Rules states that “[w]ithin 10 days from receipt of notice [of violation] or such other period as may be specified, the recipient shall send a written answer, in duplicate, directly to the Commission office originating the official notice.”¹⁶ In the *NOV*, issued on October 22, 2012, Onda Mexicana was directed to explain each violation listed therein, including the steps taken to correct the violations and a timeline for completion of any pending corrective actions, by November 12, 2012.¹⁷ Onda Mexicana failed to submit a written response by the due date. On January 16, 2013, Onda Mexicana hand-delivered a late-filed and incomplete *NOV* response to the Tampa Office agents who were conducting a re-inspection of the station on site.¹⁸ Although the Tampa Office had no record of receiving the response prior to the re-inspection, the Tampa Office agents nevertheless provided Onda Mexicana an opportunity to provide a complete response within seven days from the re-inspection date. Onda Mexicana did not file a response.

7. On March 1, 2013, the Tampa Office sent Onda Mexicana a letter requesting a complete response to the *NOV* within ten days from the date of the letter.¹⁹ The letter warned Onda Mexicana that it could be subject to potential enforcement action for its failure to respond. Onda Mexicana, however, did not file a response to the *NOV* within 10 days, but instead requested an extension of time (i.e., until April 17, 2013) to submit its response. Despite the grant of its extension request, Onda Mexicana failed to submit a response by the due date, in violation of Section 1.89(b) of the Rules.²⁰ Thereafter, the Tampa Office sent a second letter to Onda Mexicana on April 24, 2013, directing Onda Mexican to submit its response within five days.²¹ The Tampa Office warned Onda Mexicana that the April 24 letter would serve as the final opportunity for Onda Mexicana to submit a complete response to the *NOV* or face enforcement action. As of the release date of this NAL—almost a year since the re-inspection date—the Tampa Office still has not received a complete response from Onda Mexicana. Based on the foregoing evidence, we find that Onda Mexicana apparently willfully and repeatedly violated Section 1.89(b) of the Rules by failing to respond to a Bureau-issued NOV.

¹⁴ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹⁵ Section 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.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

¹⁶ 47 C.F.R. § 1.89(b).

¹⁷ See *NOV* at 1-3.

¹⁸ Although Onda Mexicana’s incomplete response to the *NOV* was dated November 1, 2012 (a date before the *NOV* response due date), the Tampa Office never received a copy of this response via mail and Onda Mexicana had no proof to confirm that the response was timely mailed and delivered.

¹⁹ See *supra* note 5.

²⁰ 47 C.F.R. § 1.89(b).

²¹ See *supra* note 8.

B. Proposed Forfeiture and Reporting Requirement

8. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for a failure to respond to a Commission communication is \$4,000.²² In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, 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.²³ In doing so, we find that Onda Mexicana's repeated (and continuing) failure to fully respond to the Bureau's *NOV* warrants an upward adjustment of the base forfeiture amount. As the record reflects, Onda Mexicana has been ordered multiple times to provide a complete response, yet it has not done so. Misconduct of this type is serious and threatens to compromise the Commission's ability to adequately investigate violations of its rules. Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Onda Mexicana is apparently liable for a forfeiture in the amount of \$8,000.²⁴

9. We also order Onda Mexicana to respond fully to the *NOV* within ten (10) calendar days from the date of this NAL. A failure to comply with this order may constitute an additional, continuing violation that may subject Onda Mexicana to further enforcement action, including the imposition of additional (and substantially higher) forfeitures and initiation of proceedings that could result in the revocation of the station's license.²⁵ Any additional penalties we propose for a continuing failure to timely file a complete response to the *NOV* will be based on our application of the Section 503(b)(2)(E) factors and our forfeiture guidelines, and will be separate and apart from any penalties imposed for the violations identified in the *NOV*.

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, 0.204, 0.311, 0.314, and 1.80 of the Commission's rules, Onda Mexicana Radio Group, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of eight thousand dollars (\$8,000) for violating Section 1.89(b) of the Commission's rules.²⁶

²² *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recons. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

²³ 47 U.S.C. § 503(b)(2)(E).

²⁴ *See, e.g., Christian Broadcasting Corporation*, Forfeiture Order, 16 FCC Rcd 7137 (Enf. Bur. 2001) (*Christian*) (upholding, among other things, the imposition of an \$8,000 forfeiture for failing to respond to an *NOV* and one follow up letter, in violation of Section 1.89(b) of the rules, to a licensee with a history of failing to respond to Commission notices). Here, we find that the proposed forfeiture amount is appropriate based on the particular circumstances of this case. However, if we find that our current forfeiture determination in this case and other similar cases do not adequately deter violations of Section 1.89(b), we will consider imposing even higher forfeitures within the scope of our authority in the initial forfeiture action, given the seriousness of such violations. *See, e.g., Technical Communication Network*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 1018 (Enf. Bur. 2013) (imposing \$25,000 forfeiture for failure to fully respond to a Letter of Inquiry).

²⁵ *See 1st Source Information Specialists, Inc., d/b/a Locatocell.com*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 8193, 8196-97, para. 13 (2006), *aff'd*, Forfeiture Order, 22 FCC Rcd 431 (2007) (imposing a \$97,500 forfeiture for a continuing violation of a failure to provide information and documents requested in a Commission investigation).

²⁶ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 1.89(b).

11. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Onda Mexicana Radio Group, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. **IT IS FURTHER ORDERED** that Onda Mexicana Radio Group, Inc. **SHALL FULLY RESPOND** no later than ten (10) calendar days from the release date of this NAL to the Bureau's Notice of Violation dated October 22, 2012, in accordance with the delivery instructions set forth therein. In addition, Onda Mexicana Radio Group, Inc. shall e-mail the written response to SCR-Response@fcc.gov.

13. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Onda Mexicana Radio Group, Inc. shall also send electronic notification on the date said payment is made to SCR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁷ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- 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.

14. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁸ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

15. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.²⁹ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Tampa Office, 4010 W. Boy

²⁷ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁸ See 47 C.F.R. § 1.1914.

²⁹ 47 C.F.R. §§ 1.16, 1.80(f)(3).

Scout Blvd., Suite 425, Tampa, FL 33607-5744, and include the NAL/Acct. No. referenced in the caption. Onda Mexicana Radio Group, Inc., also shall e-mail the written response to SCR-Response@fcc.gov.

16. 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; (2) financial statements prepared according to generally accepted accounting principles (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.

17. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and First Class Mail to Onda Mexicana Radio Group, Inc. at 1000 Universal studios Plaza, Bldg. 22A, Suite 253, Orlando, FL 32819.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow
District Director
Tampa Office
South Central Region
Enforcement Bureau