

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

In the Matter of	)	MM Docket No. 96-172
	)	
Mario Loredo	)	
	)	
Station KZQD(FM), Liberal, KS	)	

**ORDER TO SHOW CAUSE AND NOTICE OF APPARENT LIABILITY**

**Adopted: August 15, 1996**

**Released: August 27, 1996**

By the Commission:

1. The Commission has before it for consideration the construction permit of Mario Loredo ("Loredo") for unbuilt Radio Station KZQD(FM), Liberal, Kansas.<sup>1</sup>

2. Information now before the Commission raises serious questions as to whether Loredo possesses the qualifications to be and remain permittee of KZQD(FM). This information could warrant revocation of the permit.

3. Background. An application to assign the construction permit of station KZQD(FM) from Alpha Broadcasting, Inc. to Mario Loredo was filed with the Commission on August 24, 1993 (BAPH-930824GE). This application was granted on March 8, 1994 and the transaction was consummated on May 4, 1994. Question 4(b) of Section II ( Assignee's Legal Qualifications) of the application asks for the applicant's citizenship. Loredo responded "U.S.A." Question 13(a) of Section II asks: "[i]s the applicant in violation of the provisions of Section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and foreign governments? (See Instruction C to Section II)."<sup>2</sup> Loredo responded "No". Loredo signed the application on August 17, 1993. At the time that Loredo made these representations, he was a citizen of Mexico.

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<sup>1</sup> Loredo also has pending an application for extension of the construction permit (BMPH-950504JA) and an application for a minor modification of the proposed facilities (BMPH-950517IC). These applications will be held in abeyance pending resolution of this proceeding.

<sup>2</sup> Instruction C states, in pertinent part, "All applications must comply with Section 310 of the Communications Act, as amended. Specifically, Section 310 proscribes issuance of a construction permit or station license to an alien, the representative of an alien, a foreign government or the representative thereof, or a corporation organized under the laws of a foreign government."

4. In Exhibit 2 of a May 4, 1995 application for an extension of KZQD(FM)'s construction permit, Loredo voluntarily revealed that he was a citizen of Mexico. He stated that he "inadvertently" provided an incorrect answer to Question 4(b) on his Form 314 assignment application when he stated that he was a United States citizen. Loredo further stated that he had resided in the United States for 22 years, was a legal resident of the United States and was in the process of applying for United States citizenship.<sup>3</sup>

5. In a May 17, 1995 application for minor modification of facilities, Loredo reasserted that he was a citizen of Mexico and that he had filed an improper response to the citizen question in the assignment application. He argued, however, that as permittee of KZQD(FM) he was not in violation of Section 310 of the Communications Act because Section 310(b) states that, "[n]o broadcast license shall be granted to or held by any alien or the representative of any alien." Loredo contended that Section 310(b)'s prohibitions regarding licenses are not applicable to construction permits. Furthermore, Loredo stated that he did not intend to commence operation prior to the resolution of his citizenship status.

6. Discussion. Loredo's contention that Section 310(b) of the Communications Act does not prohibit the issuance of a construction permit for a broadcast facility to an alien is made without legal support and is contrary to Commission precedent. In Pan Pacific Television, Inc., 3 FCC Rcd 6629, 6637 (1988), the Commission designated a broadcasting construction permit for hearing to determine whether the permittee was owned or controlled by aliens in violation of Section 310(b) of the Communications Act. In addition, the Commission designated issues as to whether the permittee had made misrepresentations concerning its alien ownership. In Primemedia Broadcasting, Inc., 65 RR 2d 27 (1988), the Commission upheld the dismissal of four construction permit applications for new FM facilities because the applicant had exceeded the statutory benchmark relating to alien ownership interests, in violation of Section 310(b) of the Communications Act. These precedents reflect our consistent position that the requirements of Section 310(b) apply to permittees of broadcast facilities.

7. There is a substantial question of fact as to whether Loredo made misrepresentations in his application to acquire KZQD(FM) when he claimed United States citizenship (response to Question 4(b)) and reported that he was not in violation of Section 310 of the Communications Act (response to Question 13(a)). While Loredo subsequently argued that Section 310(b) is not applicable to permittees, Question 13(a) refers applicants to Instruction C, which specifically proscribes issuance of a construction permit to an alien. Truthful responses on applications are required by 47 C.F.R. Section 73.1015.<sup>4</sup> It is axiomatic that truthfulness is a key element of

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<sup>3</sup> By letter dated February 23, 1996, Loredo provided a copy of a Certificate of Naturalization demonstrating that he became a citizen of the United States on December 18, 1995.

<sup>4</sup> Section 73.1015 states, in pertinent part:

No applicant, permittee, licensee or person who files an expression of

character necessary to operate a broadcast station in the public interest and that the integrity of our processes cannot be maintained without honest dealing with the Commission. Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1211, 1212 (1986), recon. granted in part, denied in part, 1 FCC Rcd 421 (1986), appeal dismissed sub nom., National Association for Better Broadcasting v. FCC, No. 86-1179 (D.C. Cir. June 11, 1987). Nevertheless, we recognize that Loredo voluntarily revealed the information regarding his alleged inadvertent error concerning his citizenship. The presiding judge should determine what effect this disclosure should have with respect to Issue 1, specified below, as well as any possible forfeiture.

8. Accordingly, IT IS ORDERED, That pursuant to Sections 312(a) (1) and (4) of the Communications Act of 1934, as amended, Mario Loredo IS DIRECTED TO SHOW CAUSE why the permit for KZQD (FM), Liberal, Kansas, should not be REVOKED, at a hearing to be held at a time and location specified in a subsequent Order, upon the following issues:

- (1) To determine whether Mario Loredo made misrepresentations to the Commission, and violated 47 C.F.R. Section 73.1015, by stating in his assignment application (BAPH-930824GE), that he was a citizen of the United States and that he was not in violation of Section 310 of the Communications Act of 1934, as amended, when, in fact, he was a citizen of Mexico.
- (2) To determine, in light of the evidence adduced pursuant to the foregoing issue, whether Mario Loredo possesses the requisite qualifications to be and remain the permittee of KZQD(FM), Liberal, Kansas.

9. IT IS FURTHER ORDERED, That, pursuant to Section 312(d) of the Communications Act of 1934, as amended, both the BURDEN OF PROCEEDING with the introduction of evidence and the BURDEN OF PROOF with respect to the issues specified above shall be upon the MASS MEDIA BUREAU.

10. IT IS FURTHER ORDERED, That to avail himself of the opportunity to be heard, the permittee, pursuant to Section 1.91(c) of the Commission's Rules, in person or by attorney, shall file with the Commission within thirty (30) days of the receipt of the Order to Show Cause a written appearance stating that he will appear at the hearing and present evidence on the matters specified in the Order. If the permittee fails to file an appearance within the time

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interest shall in any response to Commission correspondence or inquiry or in any application, pleading, report or other written statement submitted to the Commission, make any misrepresentation or willful material omission bearing on any matter within the jurisdiction of the Commission.

specified, the right to a hearing shall be deemed to have been waived. *See* Section 1.92(a) of the Commission's Rules. Where a hearing is waived, a written statement in mitigation or justification may be submitted within thirty (30) days of the receipt of the Order to Show Cause. *See* Section 1.92(a) of the Commission's Rules. In the event the right to a hearing is waived, the presiding officer, or the Chief Administrative Law Judge if no presiding officer has been designated, will terminate the hearing proceeding and certify the case to the Commission in the regular course of business and an appropriate order will be entered. *See* Section 1.92(c) of the Commission's Rules.

11. IT IS FURTHER ORDERED, That, if it is determined that the hearing record does not warrant an Order revoking the permit for KZQD(FM), Liberal, Kansas, it shall be determined, pursuant to Section 503(b) of the Communications Act of 1934, as amended, whether an ORDER OF FORFEITURE shall be issued against the permittee in an amount not exceeding \$250,000.00 for the willful and/or repeated violation of Section 310(b) of the Communications Act of 1934, as amended and/or Section 73.1015 of the Commission's Rules.

12. IT IS FURTHER ORDERED, That this document constitutes a NOTICE OF APPARENT LIABILITY for willful and repeated violation of Section 310(b) of the Communications Act of 1934, as amended and/or Section 73.1015 of the Commission's Rules. The Commission has determined that in every case designated for hearing involving the potential revocation of a station permit it shall, as a matter of course, include a forfeiture notice so as to maintain the fullest possible flexibility of action. Since the practice of including such forfeiture notice is a routine procedure, such inclusion here should not be viewed in any manner as suggesting or otherwise indicating what the initial or final disposition of this proceeding shall be.

13. IT IS FURTHER ORDERED, That the Secretary of the Commission send a copy of this Order by *Certified Mail - Return Receipt Requested*, to:

Mario Loredó  
106 West Spruce, Box 1893  
Liberal, KS 67901

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton  
Acting Secretary