

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

In the Matter of )
Siembra Fertil P.R. Inc. ) File No.: EB-FIELDSCR-12-00001328
Licensee of Station WJDZ(FM) ) NAL/Acct. No.: 201232680004
Pastillo, Puerto Rico ) FRN: 0016447872
Facility ID#: 83299 )

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: July 26, 2012

Released: July 26, 2012

By the Resident Agent, San Juan Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Siembra Fertil P.R. Inc. (Siembra), licensee of Station WJDZ(FM), located in Pastillo, Puerto Rico, apparently willfully and repeatedly violated Section 73.1125(a) of the Commission's rules (Rules)1 by failing to staff fully Station WJDZ's main studio during normal business hours. We conclude that Siembra is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000). In addition, no later than thirty (30) calendar days from the date of this NAL, we direct Siembra to submit a statement signed under penalty of perjury that it is maintaining a full-time management and staff presence at Station WJDZ's main studio.

II. BACKGROUND

2. On March 1, 2012, an agent from the Enforcement Bureau's San Juan Office (San Juan Office) attempted to inspect Station WJDZ's main studio at 11:31 A.M. and found the main studio unattended. The agent telephoned the station's manager, who stated a technician would be able to meet him at the main studio at 1:30 P.M. The agent returned to the main studio at 1:25 P.M. and conducted the inspection with the technician. The technician stated that he is the only person who works at the main studio, as the station manager works in Toa Baja, Puerto Rico, a location more than an hour and a half drive from the main studio. He also stated that his hours are 6:00 A.M. to 11:30 A.M. and 12:30 P.M. to 3:00 P.M., Monday to Friday.

3. On March 5, 2012, an agent from the San Juan Office attempted to inspect Station WJDZ's main studio at 12:05 P.M. and 2:00 P.M., but found the station unattended and locked. The agent returned on March 7 and 16, 2012 at 10:15 A.M. and 2:02 P.M, respectively, and again found the station unattended and locked.

III. DISCUSSION

4. 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,

1 47 C.F.R. § 17.57.

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.<sup>2</sup> 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.<sup>3</sup> 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,<sup>4</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>5</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>6</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>7</sup>

#### A. Failure to Maintain Management and Staff Presence at Station WJDZ Main Studio

5. Section 73.1125(a) of the Rules requires broadcast stations to maintain a main studio.<sup>8</sup> The Commission has interpreted Section 73.1125 (also known as the Main Studio Rule) to require, among other things, that a licensee maintain a “meaningful management and staff presence” at its main studio.<sup>9</sup> Specifically, the Commission has found that a main studio “must, at a minimum, maintain full-time managerial and full-time staff personnel.”<sup>10</sup> 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.’”<sup>11</sup> On March 1, 2012, an agent from the San Juan Office found Station WJDZ’s main studio unattended in the morning. The agent interviewed a technician later in the day, who claimed he is the only person who works at the main studio,

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<sup>2</sup> 47 U.S.C. § 503(b).

<sup>3</sup> 47 U.S.C. § 312(f)(1).

<sup>4</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> 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 . . . .”).

<sup>5</sup> See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

<sup>6</sup> 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).

<sup>7</sup> 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.

<sup>8</sup> 47 C.F.R. § 73.1125.

<sup>9</sup> *Amendment of Sections 73.1125 and 73.1130 of the Commission’s Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Memorandum Opinion and Order, 3 FCC Rcd 5024, 5026 (1988) (*Main Studio and Program Origination Rules*), *erratum issued*, 3 FCC Rcd 5717 (1988) (correcting language in n.29).

<sup>10</sup> See *Jones Eastern of the Outer Banks, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 3615, 3616 & n.2 (1991) (noting that, “This is not to say that the same staff person and manager must be assigned full-time to the main studio. Rather, there must be management and staff presence on a full-time basis during normal business hours to be considered ‘meaningful.’”), *clarified*, 7 FCC Rcd 6800 (1992) (*Jones Eastern II*). See also *Birach Broadcasting Corporation*, Notice of Apparent Liability, 25 FCC Rcd 2635 (Enf. Bur. 2010).

<sup>11</sup> *Jones Eastern II*, 7 FCC Rcd at 6802.

as his supervisor worked at another distant location. On March 5, 7, and 16, 2012, an agent from the San Juan Office attempted to inspect Station WJDZ's main studio during the hours when it is allegedly staffed and found the main studio unattended and locked. Thus, based on the evidence before us, we find that Siembra apparently willfully and repeatedly violated Section 73.1125(a) of the Rules by failing to maintain a full-time managerial and staff presence at Station WJDZ's main studio.

#### B. Proposed Forfeiture and Reporting Requirement

6. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for violation of a main studio rule is \$7,000.<sup>12</sup> 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, and history of prior offenses, ability to pay, and other such matters as justice may require.<sup>13</sup> Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Siembra is apparently liable for a forfeiture in the amount of \$7,000.

7. We direct Siembra to submit a written statement, pursuant to Section 1.16 of the Rules,<sup>14</sup> signed under penalty of perjury that the licensee is maintaining a full-time management and staff presence at the Station WJDZ main studio. This statement must be provided to the San Juan Office at the address listed in paragraph 13 within thirty (30) calendar days of the release date of this NAL.

#### IV. ORDERING CLAUSES

8. 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, Siembra Fertil P.R. Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seven thousand dollars (\$7,000) for violations of Section 73.1125(a) of the Commission's rules.<sup>15</sup>

9. **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, Siembra Fertil P.R. Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. **IT IS FURTHER ORDERED** that Siembra Fertil P.R. Inc. **SHALL SUBMIT** a statement as described in paragraph 7 to the San Juan Office within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order. The statement must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, San Juan Office, U.S. Federal Building, Room 762, Hato Rey, PR 00918. Siembra Fertil P.R. Inc. shall also e-mail the written statement to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov).

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<sup>12</sup> *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.

<sup>13</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>14</sup> 47 C.F.R. § 1.16.

<sup>15</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 73.1125(a).

11. 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. Siembra Fertil P.R. Inc. will also send electronic notification on the date said payment is made to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov). Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>16</sup> 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.

12. Any request for full payment 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.<sup>17</sup> 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](mailto:ARINQUIRIES@fcc.gov).

13. 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 1.80(f)(3) and 1.16 of the Rules.<sup>18</sup> Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, San Juan Office, U.S. Federal Building, Room 762, Hato Rey, PR 00918 and include the NAL/Acct. No. referenced in the caption. Siembra San Eladio, Inc. also shall e-mail the written response to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov).

14. 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 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.

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<sup>16</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>17</sup> See 47 C.F.R. § 1.1914.

<sup>18</sup> 47 C.F.R. §§ 1.16, 1.80(f)(3).

15. **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 Siembra Fertil P.R. Inc. at PO Box 50101, Toa Baja, PR 00778.

FEDERAL COMMUNICATIONS COMMISSION

William Berry  
Resident Agent  
San Juan Office  
South Central Region  
Enforcement Bureau