

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

In re Application of)	
)	
Mr. Luis A. Mejia)	FRN: 0016335481
)	
And)	Facility ID No. 4936
)	NAL/Acct. No. MB200841410030
MSG Radio, Inc.)	File No. BALH-20070820AGE
)	
For Assignment of License)	
WIAC-FM, San Juan, Puerto Rico ¹)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: August 22, 2011

Released: August 23, 2011

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. MSG Radio, Inc. ("MSG"), assignee of WIAC-FM ("Station"), filed a Petition for Reconsideration (the "Petition") of the *Forfeiture Order* issued to MSG and Luis A. Mejia ("Mejia"), assignee of the Station, on November 19, 2008, for their willful violation of Section 1.80(b)(4) of the Commission's Rules ("Rules")² by failing to provide required information on the above-captioned application ("Application") for Commission consent to the assignment of the Station's license from Mejia to MSG.³ In this Memorandum Opinion and Order, we deny the Petition and affirm the forfeiture issued by the Media Bureau, Audio Division ("Bureau") in the total amount of three thousand dollars (\$3,000) to MSG.

II. BACKGROUND

2. On August 5, 2008, the Bureau issued a Notice of Apparent Liability for Forfeiture to both MSG and Mejia in the amount of three thousand dollars (\$3,000) each for this violation.⁴ As noted in the NAL, Mejia and MSG submitted the application on August 20, 2007. Pursuant to the Asset Purchase Agreement between Mejia and MSG, dated August 10, 2007 (the "Mejia-MSG APA"), Mejia agreed to assign the Station license, the Station call sign, the Station's books and records (including the public inspection file), and goodwill and other "intangibles" associated with the Station, to MSG for the sum of four million dollars (\$4,000,000).

¹ The Station's call sign was changed to WTOK-FM on July 27, 2010. For administrative convenience, and because prior dispositions in this case refer to the station by its previous call sign, WIAC-FM, we will do so here.

² 47 C.F.R. § 1.80(b)(4).

³ *Mr. Luis A. Mejia and MSG Radio, Inc.*, Forfeiture Order, 23 FCC Rcd 15242 (MB 2008) ("Forfeiture Order").

⁴ *Mr. Luis A. Mejia*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 11902 (2008).

3. In its Application, Mejia and MSG certified in Section II, Item 3, that they did not submit copies of all agreements for the sale of the Station, which would reflect a complete and final understanding between the licensee and assignee.⁵ Mejia and MSG provided in Exhibit 4 of the Application copies of the Mejia-MSG APA and Escrow Agreement whereby Media Services Group, Inc. would hold certain deposits contemplated by the Mejia-MSG APA. However, Mejia and MSG stated that a schedule regarding “excluded assets” (“Excluded Assets Schedule”) from the transaction was redacted because it contained “proprietary information not germane to Commission consideration of [the] Application.”⁶ No other agreements were listed in the Exhibit. However, the parties to the transaction also negotiated an Asset Purchase Agreement (the “Bestov-Madifide APA”) dated August 10, 2007, between Bestov Broadcasting, Inc. of Puerto Rico (“Bestov”) and Madifide, Inc. (“Madifide”),⁷ and an undated Shared Services Agreement (the “MSG-Madifide SSA”) between MSG and Madifide.⁸

4. Based upon its review of the proposed transaction, the Bureau found that Mejia and MSG were required to submit the Bestov-Madifide APA and the MSG-Madifide SSA with the Application, and their failure to do so constituted an actionable “failure to file required information” under Section 1.80(b)(4) of the Rules.⁹ Accordingly, on August 5, 2008, the Bureau notified Mejia and MSG of their apparent liability for a forfeiture of \$3,000 each for willfully violating Section 1.80(b)(4) of the Rules.¹⁰

5. In response to the NAL, MSG filed a timely Request for Cancellation of Proposed Forfeiture on September 4, 2008, arguing that nothing in the Rules, Commission precedent, or Form 314 Instructions explicitly requires an applicant seeking Commission consent to an assignment or transfer of control of a broadcast license to submit with the application any shared services agreement or similar agreement with a third party. Specifically, MSG argued that neither *LUJ, Inc.*¹¹ nor the *1998 Biennial Regulatory Review*¹² support the conclusion that a party seeking to assign or transfer its license is required to include with its application agreements between the assignee and a third party. MSG further argued that, contrary to the Commission’s assertions, the documents filed with the Application did in fact include reference to the MSG-Madifide SSA.¹³ Accordingly, MSG argued that it complied with the explicit requirements of the Form 314 application and that as such, the forfeiture should be cancelled.

6. On October 20, 2008, the Bureau issued a *Forfeiture Order* rejecting these arguments and finding that MSG and Mejia had willfully violated Section 1.80(b)(4) of the Commission’s Rules. The

⁵ FCC Form 314, § II, Item 3.

⁶ Assignment Application, Exhibit 4.

⁷ Mejia is the 100 percent shareholder of Bestov. Absent a waiver of the Commission’s local radio ownership rules, Madifide could not acquire an attributable interest in the Station, as it already owned the maximum number of stations allowable in the Puerto Rico Arbitron Market. In the Bestov-Madifide APA, Bestov proposed to sell Madifide tangible and intangible assets associated with the leases for the studio, office, and transmitter facilities needed to operate the Station for a total price of twelve million five hundred thousand dollars (\$12,500,000).

⁸ Under the MSG-Madifide SSA, Madifide would provide MSG with access to the station’s studio and tower. However, the MSG-Madifide SSA excluded the sharing of other services including, but not limited to MSG’s employees, contractors, sales, accounting, programming, and related advertising decisions.

⁹ 47 C.F.R. § 1.80(b)(4).

¹⁰ The Commission granted the Application on August 5, 2008. See *Mr. Luis A. Mejia*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 11902 (2008).

¹¹ *LUJ, Inc. and Long Nine, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 16980 (MB 2002).

¹² *1998 Biennial Regulatory Review*, Report and Order, 13 FCC Rcd 23056 (1998).

¹³ In the Petition, MSG states that the NAL was issued because MSG did not include the MSG-Madifide SSA in the application. However, the NAL and Forfeiture Order were issued because MSG failed to include both the MSG-Madifide SSA and the Bestov-Madifide APA.

Bureau rejected MSG's interpretation of *LUJ, Inc.*, stating, "Despite the fact that *LUJ, Inc.* . . . [does] not explicitly require parties to an assignment or transfer of control application to file third-party agreements, it is axiomatic that they must furnish all information necessary to enable the Commission to effectively evaluate the transaction."¹⁴ The Bureau further explained that the applicants in *LUJ, Inc.* were merely admonished rather than the subjects of a notice of apparent liability because their omissions were not germane to the subject application and did not constitute separate or additional agreements. The Bureau concluded that the exception discussed in *LUJ, Inc.* did not apply in the instant case because the Bestov-Madifide APA and the MSG-Madifide SSA were essential to fully understanding the proposed transaction. In response to the *Forfeiture Order*, MSG timely filed its Petition on November 19, 2008.

7. In its Petition, MSG reiterates its arguments that it had no notice of the requirement to submit the MSG-Madifide SSA and that imposition of a forfeiture is inconsistent with Commission and judicial precedent. MSG asserts that the above reasons warrant cancellation of the forfeiture.

III. DISCUSSION

8. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order or raises changed circumstances or additional facts not known or existing at the time of the petitioner's last opportunity to present such matters.¹⁵ MSG's petition restates its earlier arguments and raises issues that were addressed in the *Forfeiture Order*. We have previously considered and rejected MSG's arguments that Form 314, the accompanying instructions and worksheets, and prior Commission decisions do not provide clear guidance that the MSG-Madifide SSA and Bestov-Madifide APA should have been submitted with the Application. We also addressed MSG's contentions that the forfeiture is inconsistent with prior precedent, including *LUJ, Inc.*, in the *Forfeiture Order* and explained why a forfeiture was inappropriate in *LUJ* but warranted here.¹⁶ We will not grant reconsideration "to debate matters upon which the Commission has already deliberated and spoken."¹⁷

9. MSG also argues that the Bureau's reliance on *Citicasters Licenses, L.P.*,¹⁸ is inappropriate because that case arose in a different context: in *Citicasters*, the Commission faulted a license renewal applicant for failure to identify NALs in the station's renewal application, and "there is simply no way that a reasonable person could have interpreted that general statement in a renewal proceeding to mean that . . . a part to an assignment application was obligated to submit a third-party agreement."¹⁹ However, the case states that "full and clear disclosure of all material facts in *every application* is essential to the efficient administration of the Commission's licensing process, and proper analysis of an application is critically dependent on the accuracy and completeness of information and data which only the applicant can provide."²⁰ Therefore, we find MSG's argument unpersuasive.

¹⁴ *Forfeiture Order*, 25 FCC Rcd at 15247, citing *Citicasters Licenses, L.P.*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 19324, 19338 (MB 2007).

¹⁵ See 47 C.F.R. § 1.106; *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966) ("*Lorain Journal*"); see also *National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003).

¹⁶ See *Forfeiture Order*.

¹⁷ *Lorain Journal*, 37 FCC at 686.

¹⁸ 22 FCC Rcd 19324 (MB 2007).

¹⁹ Petition at 4-5.

²⁰ *Citicasters*, 22 FCC Rcd at 19338 (emphasis added).

IV. ORDERING CLAUSE

10. Accordingly, IT IS ORDERED, that the Petition for Reconsideration filed by MSG Radio, Inc. on November 19, 2008, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau