

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)	
)	
AERCO BROADCASTING CORPORATION)	Facility ID No.: 4077
Licensee of television station WSJU-TV)	NAL/Acct: 201441420003
San Juan, Puerto Rico)	FRN No: 0003732435

RECEIVED - FCC

TO: Chief, Video Division
Media Bureau

MAR -7 2014

Federal Communications Commission
Bureau / Office

**RESPONSE TO
NOTICE OF APPARENT LIABILITY AND
REQUEST FOR CANCELLATION OR REDUCTION**

Aerco Broadcasting Corporation, licensee of television station WSJU-TV, San Juan, Puerto, by counsel, submits this Response to the "Notice of Apparent Liability for Forfeiture" ("NAL"), released February 5, 2014. Aerco is requesting cancellation or, in the alternative, a reduction of the proposed forfeiture.

1. The NAL proposes to impose a forfeiture in the amount of Ten thousand dollars (\$20,000.00) for willful and repeated violation of the Commission's rules (a) failing to file the Station's quarterly TV Issues/programs Lists; (b) failing to file timely Children's Television Programming Reports and (c) failing to report the violations in its renewal application.

2. Aerco is requesting that the proposed Forfeiture be cancelled for the reasons stated herein.

3. Alternatively, the licensee is requesting a reduction of the proposed forfeiture based upon its inability to pay the proposed fine.

A. Issues and Programs

Olivaris Program

4. WSJU has a long history of locally produced public affairs programming directed to local issues and problems. For the past four (4) years, the station has produced a 2-hour local program that is aired each weekday, Monday through Friday: "De todo y con todo con Angel Oliveras" (referred to as "Olivaris Program"). The Oliveras Program is aired 8:00 A.M. to 10:00 A.M. Because this is a live program, all topics and issues of significance are discussed during this 10-hour weekly block of programming. There are few other television stations that locally produce such programs in order to address problems in a topical fashion.

5. A recent sampling of the topics included in the Olivaris Program is attached as Exhibit 1.

Puerto Rico Matutino Program

6. Prior to the Olivaris Program, the station broadcasted a locally produced, live program called "Puerto Rico Matutino." This program was aired from 6:00 A.M. to 8:00 A.M., Monday through Friday. This program began in 1999 and continued until 2007. This program, like the Olivaris Program focused on the daily topical issues of the day.

Artefusion Program

7. Within the last two years, Aerco has broadcasted a one hour weekly (Tuesdays) program from 7:00 P.M. to 8:00 P.M. entitled "Artefusion." This program is directed to viewers who are hearing impaired and utilizes a web cam for interactive. This program addresses the issues and problems of the hearing impaired in San Juan and in Puerto Rico.

8. All of these programs demonstrate the commitment that the station has to broadcasting programming directed not only to a few selected community problems, but to the many and aired problems and issues facing San Juan and Puerto Rico. The station has never been criticized for failing to broadcast programming directed to local problems, and that is, after all, the whole purpose of the problems/programs list rule in the first place.

9. While there may have been a reporting failure, substantively the station has done much more than others. It should not be fined for a documentation violation, especially where the general public is not prejudiced or harmed. In this connection, compliance or noncompliance with the station's public file requirements is obvious since the station has to upload both the issues/programming list and the Children's list. There has not been an intent to deceive the Commission with respect to the Issues/programming reporting and the Children's Programming reports.

10. An appropriate punishment would be an admonition, not a monetary fine.

B. Children's Television Reports.

11. In the case of the Children's Television Reports, the NAL faults the station for filing some reports late.

12. While the NAL is not specific on this point, it is clear that in most instances where the reports were not filed by 10th of the month following the quarter, the reports were filed within a few days. There is a very brief window of 10 days from the end of the quarter to file the reports and a late filing of a few days should be excused.

13. The children's reports are filed electronically, and have been available to the Commission staff and the public for many years. No member of the public has challenged the station's commitment to children's programming

14. The proposed fine for filing this type of report a few days after the due date, is clearly excessive under these circumstances.

C. Renewal Reporting Rule Violation

15. Finally, the NAL proposes a fine for failing to report the violations in its rule violations.

16. The WSJU renewal is still pending and the station should be given the opportunity to amend its application. Since both the Issues report and the Children's report are not on file with the Commission, it is clear that the station had no intent to deceive the Commission. Quite the contrary, it is proud of its efforts at programming to local community problems and its efforts to provide quality Children's programming.

17. If the station did not fulfill its programming obligations, then a fine might be in order, but that is not the case here, and the proposed fine should be cancelled.

D. Reduction of Fine

18. If the Commission staff is not inclined to cancel the proposed fine, it should at least reduce the fine, for the reasons advanced above, and for financial reasons.

19. In support of this request, there are appended hereto tax returns for 2010 and 2011, (Exhibits 2, and 3, respectively)¹. A balance sheet is included in each tax return. As the

¹ Confidentiality of the financial reports and tax returns is requested due to the obvious proprietary nature of this material.

Commission staff can see from the returns, and the summary below, Aerco's stations do not operate at a profit and their gross income has steadily decreased since the beginning of the current economic recession that has hit areas, such as Puerto Rico, particularly hard.

20. Aerco operates not only WSJU-TV but companion radio station WQBS (AM), San Juan, Puerto Rico. For the previous two years (2010, and 2011) both stations combined had an average yearly gross income of \$ 1,196,880.

<u>Year</u>	<u>Gross Income</u>
2011	\$ 535,084
2010	661,796

21. For the same period, the stations operated at an average net operating LOSS of -\$73, 532. In 2011 the stations realized a LOSS of \$94,001.

<u>Year</u>	<u>Net Income(loss)</u>
2011	(\$ 94,001)
2010	20,469

The significant decrease of both gross income and net income in 2010 and 2011 is attributable to the downturn in the economy as a result of the severe economic recession which began in 2009 and continues to this year. The stations have struggled to remain economically viable and, thus, able to maintain its public service obligations.

22. The Company's tax return for 2012 will be filed as a supplement.

23. The company's tax return for 2013 has not yet been completed.

24. It is the Commission policy to make a downward adjustment in the forfeiture where there is a demonstrated inability to pay, such as here. Specifically, the Commission noted:

Although we are eliminating the percentage ranges, we are required by statute to consider various adjustment criteria before determining a forfeiture amount in each case. The adjustment criteria listed in Appendix A of the guidelines reflect the factors outlined in the statute. For example, the statute requires that we consider the “nature, circumstances, extent and gravity of the violation”. Thus, the adjustment factors regarding the severity of the violation that may increase or decrease the forfeiture are: substantial harm, repeated or continuous violation, or substantial or economic gain derived from the violation, and the minor nature of the violation. The statute also requires that “with respect to the violator,” we consider factors such as “the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.” Accordingly, the adjustment factors we evaluate in considering the actions of the violator include egregious misconduct, ability or inability to pay, intentional violation, prior violation of same or other requirements, good faith or voluntary disclosure, and history of overall compliance. 47 U.S.C. Sec. 503(b)(2)(D). In sum, although the base amount is the starting point in assessing a forfeiture, the forfeiture may be decreased below the base amount or increased to the statutory maximum when the adjustment criteria are considered based on the facts of the case.

Forfeiture Policy Statement, 8 CR 1314, 12 FCC Rcd 17087 (1997), at para. 27

25. This policy is predicated upon the dictates of the Communications Act §503(b)(2)(E) (47 U.S.C. 503(b)(2)(e)): “The amount of such forfeiture penalty shall be assessed by the Commission, or its designee, by written notice. In determining the amount of such a forfeiture penalty, the Commission or its designee shall 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 such other matters as justice may require.”

26. In the past, the Commission has reduced a forfeiture to an amount adequate to deter future misconduct after consideration of the violators' unprofitable history, and the

relative lower value of the licensed operation at issue. See, e.g., *First Greenville Corporation*, 11 FCC Rcd 7399 (1996); *Benito Rish*, 10 FCC Rcd 2861 (1995) (profit and loss statement submitted to reflect inability to pay a forfeiture); see also *Pinnacle Communications, Inc.*, 11 FCC Rcd 15496 (1996) (analysis of the balance sheet and the profit and loss statement accompanied by the licensee's certification focused on net liabilities in light of default of loan payment).

27. In this case, the combined gross revenue of the radio and television station for 2011 is only \$ 535,084, resulting in a net income (loss) of -\$ 94,001.

28. Based upon the foregoing, the imposition of the proposed \$20,000 forfeiture would pose a great hardship on the stations.

29. An admonition is sufficient for the Commission to ensure that the licensee's reporting requirements are met. Alternatively, a reduction in the forfeiture is appropriate.

Respectfully submitted,
AERCO BROADCASTING CORPORATION



March 7, 2014

By:

John A. Borsari
Its Attorney

BORSARI & ASSOC., PLC
P.O. Box 100009
Arlington, VA 22210
(703) 524-5800
(703) 524-4329 (fax)
john@borsari.com

CERTIFICATE OF SERVICE

I, John A. Borsari, hereby certify that on March 7, 2014 I caused to be mailed, by First Class mail, postage prepaid, and caused to be emailed, a copy of the foregoing document to the following:

Peter Saharko, Esq.
Attorney Advisor, Video Division

Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

A handwritten signature in black ink, appearing to read 'J. Borsari', written in a cursive style.

John A. Borsari

OLIVERAS PROGRAM

FECHA	PERSONA	AGENCIA	ASUNTO O PROBLEMA
11-1-13	Fondo Seguros del Estado		Orientacion a oyentes
11-4-13	José Rodríguez – Defensor derechos Humanos		Reunión con nuevo asesor de policía Matos
11-4-13	Beniliz Gonzales		Adiestramiento sobre fraude en Caguas
11-5-13	José Rodríguez		Opinión sobre nuevo superintendente
11-5-13	Rolando Acosta		Opinión sobre nuevo superintendente
11-6-13	Lcdo Nevarez	Justicia	Caso Yexeira-eliminación de evidencia por jueza
11-6-13			Caso investigación Yexeira
11-7-13	Anthony “la maquina”		cantante
11-7-13	Sra. Rodriguex - Canovans	Recreación y Deportes	Cancah bajo techo en 400 en Canovanas no sirve Abondanada
11-8-13	Lcdo. Nevarez		Casos legales
11-8-13	Fondo Seguro Estado		Orientación a consumidores
11-8-13	Hector Delgado		Caso de inocente en la carcel
11-12-13	José Rodríguez		Defensor de derechos humanos dominicano
11-12-13	Esteban		Defensor de derechos humanos dominicano
11-14-13	Dr. Cesar Vazquez		
11-14-13	Dr. Arrieta		Seminario de Etica
11-15-13	Lcdo. Edgardo Rivera		Casos legales
11-15-13	Fondo Seguro Estado		
11-20-13	Belinda Hill		Actividad para personas sin hogar el 11-22-13 en el parque Munoz Ricera
11-20-13	Rec. Ciencias Medicas		Actividad de navidad
11-22-13	Lcda Lucille Borges		Asuntos legales
11-22-13	Carmen Guarren	Niños de Educación Especial	Decisión de Juez Federal Rebollo a favor



			de educación especia;
11-22-13	Senador Luis Ramon Nieves		Caso de humedales de Guanica
11-22-13	Rolando Acosta		
11-22-13	DR. Arrieta		
11-25-13	Figueroa Jaramillo-UTIER	AEE	Opciones de Bathia para los problemas energetico
11-25-13	Gilberto Arvelo		Semana de "Black Friday"
11-25-13	Lcdo. Nevarez		Caso legal reseñado en prensa de allanamiento ilegal
11-26-13	Jose Escribano		CD Forte
11-26-13	Jose Franco- Hermana dad Empleados de Hacienda	Dept Hacienda	Protesta por cierre de oficinas de Hacienda
11-26-13	Lcdo. Nevarez		Caso de demanda a hotel por empleada que mato a otra y caso de muerte de dueña de hogar de ancianos en Aibonito
11-27-13	Lcdo. Nevarez		Análisis de noticia sobre autos quemados en cuartel de Ponce
11-29-13	Beniliz Gonzalez		

FECHA	PERSONA	AGENCIA	ASUNTO O PROBLEMA
10-1-13	Dr. Eduardo Ibarra	Salud	Obamacare y mensaje sobre plan de salud universal de salud presentado por gobernador
10-1-13	José Sánchez – presidente Asociación de Laboratorios Clínicos	Salud	Obamacare y mensaje sobre plan de salud universal de salud presentado por gobernador
10-1-13	Ángel Figueroa Jaramillo : UTIER	AEE	Situaciones de energía eléctrica y
10-2-13	José Rodríguez – derechos humanos	Justicia	Denuncia de abusos contra dominicanos y manifestación en contra de cambio constitucional de Republica Dominicana contra haitianos
10-2-13	Lcda. Lucille Borges	Justicia	Caso de sentencia de bebe colocado en envera por la mama
10-4-13	Cristobal Berrios – Mr. Blup		Actividad de recorrido firmas para estadidad
10-7-13	Rolando Acosta – Lider dominicano		Haitianos llegando aPR.
1-0-7-13	Rep. Aponete Dalmau	Cámara de Representantes	Proyecto para hacer cambios en la AEE
10-8-13	Carmen Guarren – representante de niños de educación especial	Educación Especial	Denuncia en contra de secretaria de educación especial
10-8-13	Secretario de Corrección	Corrección	Noticias sobre comportamiento de presos en las cárceles, caso de grillete
10-8-13	Angie Rodriguez (oyente)	Municipio de San Juan	Perro muerto en calle de Caparra Terrace , posible contaminación ambiental por condiciones
10-9-13	Carmen Guarren	Departamento Educacion	Educación Especial
10-10-13	Lcda. Lucile Borges	Corrección	Posible plan para visitas conyugales para confinados
10-10-13	Carmen Guarren	Departamento Educacion	Reunión comité de padres de niños con impedimentos
10-10-13	oyente	Departamento de Educacion	Problema de ratas en escuela Masso Rivera en Toa Alta
10-14-13	Lcdo. Nevarez	Justicia	Casos Legales

Fecha	Persona	Agencia	Asunto
10-15-13	Federico Torres Montalvo- lider gremial	Edificios Publicos	Denuncian y solicitan la renuncia de director de Edificios Piblicos
10-15-13	Lcdo Lopez	Tribunales	caso 787- atropello 7 personas en residencial El Prado
10-16-13	Lcdo Lopez	Tribunales	caso 787- atropello 7 personas en residencial El Prado
10-16-13	AEELA		Maraton
10-16-13	Gilberto Arvelo		Caso de DACO
10-17-13	Lcda. Borges	Tribunales	Caso Casellas
10-17-13	Lcdo. Nevarez	Tribunales	Caso Casellas
10-17-13	Ángel Figueroa -oyente		Caso de asesinato de su hijo
10-18-13	Dr. Harry Jimenez endocrinólogo	Salud' Clínicas de Escuela de Medicina	Programa de Recinto de ciencias Medicas ' Endocrinólogos a Su Servicio
10-18-13	Personal del Fondo del Seguro del Estado		Orientación sobre los beneficios del Fondo
10-21-13		Junta Calidad Ambiental	Foro de Scuba Dogs – conservación y reciclaje basura
10-21-13	Lcdo. Nevares	Tribunales	Caso de selección de jurado de caso Casellas
10-22-13	Gilberto Arvelo (Dr. Shopper)		Caso de pirámide brasileño
10-22-13	María González Medina	Educación Especial	Promueve libro niños de educación especial
10-24-13	Maribel Caro (Marisol)		Juventud PR en riesgo actividad en Llorens Torrens
10-24-13	Rep. De la cámara Jorge Navarro	Municipio de San Juan	Problemas con facilidades deportivas
10-24-13	Jose Rodriguez –Comité de los derechos humanos dominicanos	Tribunales	Caso de tribunal de abuso de dominicano. Alexander ,, Figaro, Juan Medrano Gutierrez
10-25-13	Estudiantes de Escuela Jesús T Piñero de Carolina		Cortometraje sobre la Ley 54 hecho por estudiantes
10-25-13	Eric Cintron – asesor seguros Rey Suarez – area de reclamaciones	Fondo Seguro Estado	
10-28-13	Carmen Guarren – Educacion Especial	Departamento de Educación	100 plazas adicionales para asistentes de educación especial, pero el impacto en escuelas es mínimo. Continúan estudiantes sin servicios de educación esp. Tendrán reunión

			con secretario de Educación
FECHA	PERSONA	AGENCIA	ASUNTO
10-28-13	Rolando Acosta		Actividad de Diputada Dominicana y situación política de San Juan
10-30-13	Lcdo. Nevarez		Caso Casellas
10-31-13	Departamento de Estado	Juntas reglamentadoras	Caso de dilación en otorgación de licencia de barberos
10-31-13	Luvi Callejas	Departamento de Corrección y Rehabilitación	Programa d boxeo en las cárceles

EXHIBITS 2 AND 3
CONFIDNETIAL DOCUMENTS

