

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

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

FORFEITURE ORDER

Adopted: October 18, 2008

Released: October 20, 2008

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of three thousand dollars (\$3,000) each to Luis A. Mejia (“Mejia”) and MSG Radio, Inc. (“MSG”) for their willful violation of Section 1.80(b)(4) of the Commission’s Rules (“Rules”)¹ by failing to provide required information on the above-captioned application (“Application”) for the assignment of license of station WIAC-FM, San Juan, Puerto Rico (“Station”) from Mejia to MSG.

2. On August 5, 2008, the Media Bureau (“Bureau”) issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of three thousand dollars (\$3,000) each to Mejia and MSG for this violation.² MSG filed a timely Request for Cancellation of Proposed Forfeiture (“Request”) on September 4, 2008.

II. BACKGROUND

3. 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 its public inspection file), and goodwill and other “intangibles” associated with the Station, to MSG for the sum of four million dollars (\$4,000,000).

4. In the 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.³ Mejia and MSG provided in Exhibit 4 of the

¹ 47 C.F.R. § 1.80(b)(4).

² *Mr. Luis A. Mejia*, Memorandum Opinion and Order and Notice of Liability for Forfeiture, 23 FCC Rcd 11902 (2008).

³ FCC Form 314, § II, Item 3.

Application copies of the Mejia-MSG APA and an 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.”⁴ No other agreements were listed in the Exhibit.

5. Shortly after the Application’s filing, the Commission received Petitions to Deny in which the petitioners alleged that Mejia and MSG lacked candor with the Commission by withholding documents germane to the transaction. Specifically, both purported to provide copies of an Asset Purchase Agreement (the “Bestov-Madifide APA”) dated August 10, 2007, between Bestov Broadcasting, Inc. of Puerto Rico (“Bestov”) and Madifide, Inc. (“Madifide”); and an undated Shared Services Agreement (the “MSG-Madifide SSA”) between MSG and Madifide. Mejia is the 100 percent shareholder of Bestov. Absent a waiver of the Commission’s local radio ownership rules,⁵ 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.⁶ 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). 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.

6. After reviewing the Petitions, the Bureau sent a letter of inquiry (the “Inquiry Letter”) to Mejia, MSG, and Madifide on May 2, 2008, requesting more information to determine whether MSG “will exercise a meaningful degree of control over the Station’s programming.”⁷ The Bureau received separate responses to the Inquiry Letter (“Responses”) from the parties on June 9, 2008. The Responses included copies of the Bestov-Madifide APA, the MSG-Madifide SSA, and a non-finalized, non-executed Option Agreement (the “MSG-Madifide Option Agreement”) between MSG and Madifide. The MSG-Madifide Option Agreement proposed that MSG extend to Madifide a two-year irrevocable option to purchase the Station license when qualified to do so under FCC rules and policies.⁸

7. 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”

⁴ Assignment Application, Exhibit 4. MSG and Mejia cite to *In re LUJ, Inc. and Long Nine, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 16980 (2002) (“*LUJ, Inc.*”), to support their decision to redact certain proprietary information which they deemed not to be germane to the Commission’s consideration of the Application.

⁵ See 47 C.F.R. § 73.3555(a).

⁶ In considering a Section 73.3555(a) waiver request for another transaction, the Commission recently noted that Madifide’s principal, Jesus M. Soto, has attributable interests in 13 radio stations in Puerto Rico, thus exceeding the limits imposed for a local radio market of its size. See *Arso Radio Corp.*, Memorandum Opinion and Order, 22 FCC Rcd 2549 (MB 2007). Mr. Soto’s current level of ownership is grandfathered. See *id.* at 2554 n.7.

⁷ Letter to Luis A. Mejia, MSG Radio, Inc., and Madifide, Inc., Reference 1800B3-TSN (MB May 2, 2008) (“Inquiry Letter”) at 2.

⁸ See MSG Response to Inquiry Letter at Exhibit A, 975. The submitted draft of the MSG-Madifide Option Agreement is dated July 17, 2007.

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 In response, MSG filed the subject Request.

8. In support of its Request, MSG states that it should not be sanctioned for its failure to include the Bestov-Madifide APA and the MSG-Madifide SSA with the Application because 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. It further argues that, contrary to the Commission's assertions, the documents filed with the Application did in fact include reference to the MSG-Madifide SSA. Accordingly, MSG asserts that it complied with the explicit requirements of the Form 314 application and that as such, the forfeiture should be cancelled.

III. DISCUSSION

9. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,¹¹ Section 1.80 of the Rules,¹² and the Commission's *Forfeiture Policy Statement*.¹³ In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we 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.¹⁴ We have considered MSG's response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that MSG and Mejia willfully¹⁵ violated Section 1.80(b)(4) of the Rules and that no mitigating circumstances warrant cancellation or further reduction of the proposed forfeiture amount.

10. Section 1.80(b)(4) of the Rules gives a base penalty of \$3,000 for any applicant who fails to provide "required information" on an Application submitted for Commission review.¹⁶ The Commission operates a "largely self-policing" regulatory system,¹⁷ and thus, to allow this type of conduct would "compromise the Commission's ability to adequately investigate" potential violations of its rules and procedures.¹⁸

⁹ 47 C.F.R. § 1.80(b)(4).

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

¹¹ 47 U.S.C. § 503(b).

¹² 47 C.F.R. § 1.80.

¹³ *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), *recon. denied*, 15 FCC Rcd 303 (1999).

¹⁴ 47 U.S.C. § 503(b)(2)(E).

¹⁵ 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. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

¹⁶ 47 C.F.R. § 1.80(b)(4).

¹⁷ See, e.g., *Contemporary Media, Inc. v. FCC*, 214 F.3d 187, 192 (D.C. Cir. 2000).

¹⁸ See *In re Ultimate Medium Communications Corporation*, Notice of Apparent Liability for Forfeiture and Order, 22 FCC Rcd 17282, 17285 (2007).

11. In the present case, Mejia and MSG failed to provide the information required to fully answer Section II, Item 3 of the Application. Instead, Mejia and MSG only supplied the MSG-Mejia APA and an Escrow Agreement, and stated that they had omitted an Excluded Assets Schedule because it contained “proprietary information not germane to Commission consideration of [the] Application.” To support this decision, Mejia and MSG cited to *LUJ, Inc.* In *LUJ, Inc.*, the applicant certified that its assignment application was complete as filed even though it omitted certain schedules.¹⁹ The Commission admonished the applicant rather than issuing a notice of apparent liability because the omissions were “not germane to the subject application [and did not] . . . constitute [] separate or additional agreement[s].”²⁰ However, the Commission explained that if an applicant chose to exclude transaction documents under this exception, it was required to identify the excluded agreements and specifically state the basis for their exclusion.²¹ It reasoned that to do otherwise would prevent the Commission and the public from determining whether such documents should be submitted, thus undermining a key safeguard of the streamlined application process established in the *1998 Biennial Regulatory Review*.²²

12. In the NAL, 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. It held that, at a minimum, Mejia and MSG were required to disclose the existence of these agreements and provide a basis for their exclusion. Indeed, the Bureau concluded that without the shared services agreement between MSG and Madifide, MSG would only be acquiring the Station’s license and “intangibles” -- but not the equipment and studio space necessary to operate the Station -- in violation of the Commission’s bare license policy.²³

13. In its Request, MSG argues that the Bureau failed to provide clear notice that it was required to provide the Bestove-Madifide APA and the MSG-Madifide SSA with the Application.²⁴ It claims that the NAL failed to cite “any rule, published policy, or reported decision” that requires a party to file shared services agreements, or any other agreement with a third party, when filing an assignment application.²⁵ Specifically, MSG argues that neither *LUJ, Inc.* nor the *1998 Biennial Regulatory Review* 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.²⁶ It further notes that the Form 314 does not explicitly require the submission of any third-party agreements.²⁷ Finally, it claims that the Mejia-MSG APA filed with the Application did in fact reference the MSG-Madifide SSA “and its importance as

¹⁹ *LUJ, Inc.*, 17 FCC Rcd at 16981.

²⁰ *See id.* at 16982.

²¹ *See id.* at 16983.

²² *See id.* at 16984. There, the Commission explained that the streamlined application process was established in the *1998 Biennial Regulatory Review* to “ensure easy public access” to the transaction agreements proposed by an applicant. *Id.* (citing *1998 Biennial Regulatory Review*, Report and Order, 13 FCC Rcd 23056, 23075 (1998)).

²³ *See American Music Radio*, Memorandum Opinion and Order, 10 FCC Rcd 8769, 8772-73 (1995).

²⁴ *See Request* at 3.

²⁵ *Id.*

²⁶ *Id.* at 5-6.

²⁷ *Id.* at 4.

a closing condition” for the transaction.²⁸ Given the lack of notice and the fact that the MSG-Madifide SSA was referenced in the Mejia-MSG APA, MSG asserts that it should not be sanctioned.²⁹

14. We reject MSG’s narrow interpretation of the Commission’s policies and precedent. Despite the fact that *LUJ, Inc.* and the *1998 Biennial Regulatory Review* do 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. We have long held 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.”³⁰ Indeed, in reaching its holding, the Commission in *LUJ, Inc.* clearly relied on the fact that the parties had submitted “all relevant information necessary for examination of the subject transaction,” while explicitly holding that when a party chooses to omit “transaction documents” the party must identify the excluded agreements and specifically state the basis for their conclusion.³¹ Given the significance of the MSG-Madifide SSA and the Bestov-Madifide APA, their “full and clear” disclosure was necessary to the Commission’s understanding of the overall transaction.³² Passing reference to the MSG-Madifide SSA in the MSG-Mejia APA does not satisfy this standard.³³ At a bare minimum, the parties should have listed these agreements in Exhibit 4 of the Application and explained the basis for their exclusion.³⁴ Accordingly, we find that Mejia and MSG willfully violated Section 1.80(b)(4) of the Rules and that a forfeiture in the amount of \$3,000 each is appropriate.

IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission’s Rules,³⁵ that Luis A. Mejia and MSG Radio, Inc., SHALL FORFEIT to the United States the sum of \$3,000 each for willfully violating Section 1.80(b)(4) of the Commission’s Rules.

16. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission’s Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant

²⁸ *Id.* at 7.

²⁹ *Id.*

³⁰ *Citicasters Licenses, L.P.*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd. 19324, 19338 (MB 2007).

³¹ *LUJ, Inc.*, 17 FCC Rcd at 169823. *See also id.* at 16983 (holding that parties that “submit complete and final copies of *all transaction documents* may continue to respond “Yes” to the applicable certification”) (emphasis added).

³² The fact that the Mejia-MSG APA, standing alone, violated the Commission’s bare license policy and therefore was *not* in compliance with the Commission’s rules and policies, as required by Section II, Question 3(c) of the Application, underscores the importance of these transaction documents. The omitted document in *LUJ, Inc.* was only a list of assets excluded from the sale. Mejia and MSG similarly omitted such a list of excluded assets from the Application, but that was not considered to be part of the violation of Section 1.80(b)(4) of the Rules.

³³ *See* MSG-Mejia APA Agreement Section 7.1(d) (stating that as a closing condition, the “Buyer shall have entered into a Shared Services Agreement with Madifide, Inc. for use [of] certain equipment and services in conjunction with Buyer’s operation of the Station after Closing”).

³⁴ *See LUJ, Inc.*, 17 FCC Rcd at 16983 (where a party chooses to omit “transaction documents” from an application, it must submit an exhibit describing the omitted documents and explaining their basis for omission).

³⁵ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

to Section 504(a) of the Act.³⁶ Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code).³⁷

17. IT IS FURTHER ORDERED that copies of this Forfeiture Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Luis A. Mejia, c/o Francisco R. Montero, Esq., Fletcher, Heald & Hildreth, PLC, 1300 N. 17th Street, 11th Floor, Arlington, VA 22209, and to MSG Radio, Inc., c/o Lewis J. Paper, Esq., Dickstein Shapiro, LLP, 1825 Eye Street, N.W., Washington, DC 20006. A copy also shall be sent to Madifide, Inc., c/o Anthony T. Lepore, Esq., Anthony T. Lepore, Esq., PA, P.O. Box 823662, South Florida, FL 33082.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

³⁶ 47 U.S.C. § 504(a).

³⁷ See 47 C.F.R. § 1.1914.