

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

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In the Matter of)	File No. 98-OR-320
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Buchanan Broadcasting Company, Inc.)	
Pearl, Mississippi)	NAL/Acct. No. 815OR0001
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MEMORANDUM OPINION AND ORDER

Adopted: February 24, 2000

Released: February 25, 2000

By the Chief, Enforcement Bureau:

1. In this Order, we grant in part a Petition for Reconsideration filed on April 7, 1999, by Buchanan Broadcasting Company, Inc. ("Buchanan"), licensee of Station WJNT(AM), Jackson, Mississippi. Buchanan seeks reconsideration of the *Forfeiture Order*¹ released March 22, 1999, in which the Director, Legal Services Group, of the former Compliance and Information Bureau ("CIB") found it liable for a monetary forfeiture in the amount of \$10,000 for willful and/or repeated violations of Sections 73.1560(a)(1), 73.1745(a) and 73.49 of the Commission's Rules ("the Rules"), 47 C.F.R. §§ 73.1560(a)(1), 73.1745(a) and 73.49, and the terms of Station WJNT's authorization. For the reasons discussed below, we will grant the petition in part and reduce the monetary forfeiture amount to \$9,000.

BACKGROUND

2. In response to a complaint about Station WJNT's operations, on March 17 and 18, 1998, an agent from the Commission's New Orleans, Louisiana, Field Office ("Field Office") monitored the station's signal to determine its relative output power. Subsequently, on March 19, 1998, the agent conducted an inspection of the station's facilities. On the basis of these monitoring and inspection activities, on July 28, 1998, the District Director, New Orleans Field Office, issued a Notice of Apparent Liability ("NAL") in the amount of \$18,000, for willful and/or repeated violations of Sections 73.49 (inadequate fencing), 73.1560(a)(1) (failure to reduce nighttime power) and 73.1745(a) (failure to change directional mode of operations at night) of the Rules. In its August 26, 1998, response to the NAL, Buchanan requested reduction of the forfeiture amount. In its March 22, 1999, *Forfeiture Order*, CIB reduced the forfeiture amount to \$10,000 on the basis of Buchanan's inability to pay a larger amount.

DISCUSSION

¹ 14 FCC Rcd 5171 (Compl. & Inf. Bur. 1999).

3. The forfeiture was issued pursuant to Section 503 of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. § 503, and Section 1.80 of the Rules. In assessing the forfeiture amount, CIB followed the forfeiture standards established in Section 503 of the Act and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, FCC 99-407 (Released December 28, 1999) ("*Policy Statement*"). Section 503(b) of the Act requires that the Commission 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 other such matters as justice may require. 47 U.S.C. § 503(b)(2)(D).

4. Buchanan seeks rescission or reduction of the portion of the forfeiture imposed for violation of Section 73.49 of the Rules (inadequate fencing). In support, Buchanan asserts that the lack of effective fencing around Station WJNT's antenna tower resulted from flooding, which made the tower inaccessible. Buchanan argues that, because of the tower's inaccessibility, the lack of effective fencing around the tower did not constitute a safety hazard and that repair crews could not reach the tower. In addition, Buchanan disputes the *Forfeiture Order's* assertion (Paragraph 8) that, during the March 19, 1998, inspection the FCC agent "was able to access both the fencing area and the tower."² The agent reports that he did not walk up to the base of the tower because the site was muddy, but in his opinion, the muddy conditions did not make the tower inaccessible or prevent repair crews from reaching it.

5. We conclude that rescission of the portion of the forfeiture imposed for violation of Section 73.49 of the Rules is not warranted. Buchanan has not provided sufficient supporting evidence that a repair crew was, in fact, unable to access the tower as a result of flooding. Indeed, Buchanan has not demonstrated that it engaged a repair company or took any other steps to repair the fence prior to the March 19, 1998, inspection. We do, however, find that the muddy conditions around the base of the tower arguably impeded access, making the lack of effective fencing a less significant safety hazard. In view of this mitigating factor, we find that a reduction of the forfeiture amount to \$9,000 would be appropriate.

6. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 1.106 of the Rules, 47 C.F.R. § 1.106, Buchanan Broadcasting Company, Inc.'s petition for reconsideration of the Forfeiture Order, NAL No. 815OR0001, issued to it on March 22, 1999, **IS DENIED**, and **GRANTED ONLY TO THE EXTENT INDICATED BY THIS ORDER**.

7. **IT IS FURTHER ORDERED** that, pursuant to 47 U.S.C. § 503(b) and 47 C.F.R. § 1.80(f), Buchanan Broadcasting Company, Inc. shall, within 30 days of the release of this Order, pay the amount of \$9,000 for willful and repeated violations of 47 C.F.R. §§ 73.1560(a)(1), 73.1745(a), 73.49, and the terms of the WJNT station authorization. Payment of the forfeiture may be made in U.S. dollars, by check, credit card or money order drawn on a U.S. financial institution payable to the Federal Communications Commission.³ The remittance should be marked NAL/Acct. No. 815OR0001, and mailed to the following address:

Federal Communications Commission
Post Office Box 73482
Chicago, IL 60673-7482

Forfeiture penalties not paid within 30 days may be referred to the U.S. Attorney for recovery in a civil suit.

² 14 FCC Rcd at 5172.

³ Requests for payment under installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 445 12th Street, S.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Rules, 47 C.F.R. § 1.1914. Chief, Billings and Collections should be contacted at (202) 418-1995 for more information on payments by credit card.

47 U.S.C. § 504(a).

8. **IT IS FURTHER ORDERED** that, a copy of this Order shall be sent certified mail, return receipt requested, to Buchanan Broadcasting Company, Inc. and its counsel.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau