

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

In the Matter of)	
)	
WPGS, Inc.)	File No. EB-02-TP-242
)	
Owner of Antenna Structure Registration Number 1055007 in Mims, Florida)	NAL/Acct. No. 200232700018
)	
Titusville, Florida)	FRN 0003-7757-23

FORFEITURE ORDER

Adopted: June 2, 2003

Released: June 4, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of one thousand dollars (\$1,000) to WPGS, Inc. (“WPGS”), owner of an antenna structure with antenna structure registration (“ASR”) number 1055007 in Mims, Florida, for repeated violation of Section 17.51 of the Commission’s Rules (“Rules”).¹ The noted violation involves WPGS’s failure to exhibit red obstruction lighting on its antenna structure from sunset to sunrise.

2. On July 17, 2002, the Commission’s Tampa, Florida Field Office (“Tampa Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to WPGS for a forfeiture in the amount of ten thousand dollars (\$10,000).² WPGS filed a response to the *NAL* on September 24, 2002.

II. BACKGROUND

3. On April 23, 2002, agents from the Tampa Office investigated a report of a tower light outage in Mims, Florida. The agents observed that the top beacon (red obstruction lighting) on an antenna structure located at 4220 Golden Shores Blvd. in Mims, Florida (ASR No. 1055007) was not operating after local sunset. WPGS is the registered owner of the antenna structure and uses it in conjunction with the operation of its licensed station, WPGS(AM), Mims, Florida.

4. On April 25, 2002, two agents from the Tampa Office re-inspected WPGS’s antenna structure and observed that the top beacon was still extinguished. The agents interviewed the chief operator of WPGS(AM), who stated that he became aware of the light outage a couple of days earlier, but

¹ 47 C.F.R. §§ 17.51.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232700018 (Enf. Bur., Tampa Office, released July 17, 2002).

admitted that he had not logged the outage in the station logs or notified the Federal Aviation Administration (“FAA”) of the outage.³

5. On May 13, 2002, the Tampa Office received a letter from the owner of the property at 4220 Golden Shore Blvd., who stated that the top beacon on the WPGS tower had been out for over two months. The property owner also stated that he had contacted WPGS’s station engineer about the light outage the day after he noticed it.

6. On July 17, 2002, the Tampa Office issued an *NAL* for a \$10,000 forfeiture to WPGS for failing to exhibit red obstruction lighting on its tower between sunset and sunrise from at least April 23 to April 25, 2002 in willful and repeated violation of Section 17.51 of the Rules. In its response to the *NAL*, WPGS does not dispute that the top beacon on its tower was extinguished on these dates. However, WPGS asserts that there were extenuating circumstances which the Commission should take into consideration in determining whether to rescind or reduce the forfeiture. Specifically, WPGS’s president states that the station engineer was saddled with medical problems during the Spring of 2002 and did not advise him that the beacon had been struck by lightning and was out. WPGS’s president further states that upon learning of the outage, he immediately had the beacon replaced, and that he has directed the engineer to check the beacon on a regular basis and to report any outage to him immediately so that he can have it replaced. Consequently, WPGS’s president does not believe that the problem will reoccur. In addition, WPGS maintains that WPGS(AM) provides the area with unique public service programming and that it will not be able to continue this programming unless the forfeiture is cancelled or substantially reduced. WPGS also provides copies of its tax returns for 1999, 2000 and 2001 in support of its claim that it cannot afford to pay the proposed \$10,000 forfeiture.

III. DISCUSSION

7. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, (“Act”),⁴ Section 1.80 of the Rules,⁵ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Policy Statement*”). In examining WPGS’s response, 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.⁶

8. Section 17.51 of the Rules requires that red obstruction lighting on an antenna structure be exhibited continuously from sunset to sunrise. WPGS does not dispute that the top beacon on its tower

³ Tower owners are required to report any obstruction lighting outages to the nearest Flight Service Station or FAA office immediately if the outage is not corrected within 30 minutes. *See* 47 C.F.R. § 17.48(a). The FAA then issues a Notice to Airmen (“NOTAM”), a written advisory to aircraft pilots regarding a hazard or potential hazard of which they should be aware. A NOTAM expires automatically after 15 days, unless the tower owner calls the FAA to extend the NOTAM.

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C. § 503(b)(2)(D).

was extinguished from at least April 23 to April 25, 2002. Accordingly, we conclude that WPGS repeatedly⁷ violated Section 17.51 of the Rules.⁸

9. Although WPGS's president states that the station engineer was saddled with medical problems during the Spring of 2002 and did not advise him that the beacon was out, this fact does not justify rescission or reduction of the proposed forfeiture. It is well established that Commission licensees are responsible for the acts and omissions of their employees.⁹ Further, WPGS's remedial efforts to correct the violation are not mitigating factors warranting reduction of the proposed forfeiture.¹⁰ Moreover, we do not think that any reduction of the proposed forfeiture is warranted based on the asserted merits of WPGS(AM)'s programming. However, WPGS provides its tax returns for 1999, 2000 and 2001 in support of its claimed inability to pay the proposed forfeiture. The Commission has repeatedly held that a company's gross revenues are the best indicator of its ability to pay a forfeiture.¹¹ After considering the financial documentation submitted by WPGS, we conclude that reduction of the forfeiture amount to \$1,000 is appropriate.

10. We have examined WPGS's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that WPGS repeatedly violated Section 17.51 of the Rules, but we reduce the forfeiture proposed for this violation from \$10,000 to \$1,000.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503 of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹² WPGS, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one thousand dollars (\$1,000) for repeated violation of Section 17.51 of the Rules.

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the

⁷ Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

⁸ Because we have determined that the violation was repeated, we need not make a determination as to whether the violation was willful. In this regard, Section 503(b)(1) of the Act provides that a forfeiture penalty may be imposed if the violation is *either* willful *or* repeated. 47 U.S.C. § 503(b)(1).

⁹ See *MTD, Inc.*, 6 FCC Rcd 34, 35 (1991); *Wagenvoord Broadcasting Co.*, 35 FCC 2d 361 (1972).

¹⁰ See *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002); *Station KGVL, Inc.*, 42 FCC 2d 258, 259 (1973).

¹¹ See *Long Distance Direct, Inc.*, 15 FCC Rcd 3297, 3305 (2000); *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1991).

¹² 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

Act.¹³ Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232700018 and FRN 0003-7757-23. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁴

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail, return receipt requested, to WPGS, Inc., 805 North Dixie Avenue, Titusville, Florida 32796, and to its counsel, William D. Silva, Esq., Law Offices of William D. Silva, 5335 Wisconsin Avenue, N.W., Suite 400, Washington, D.C. 20015-2003.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹³ 47 U.S.C. § 504(a).

¹⁴ See 47 C.F.R. § 1.1914.