

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

In the Matter of	)	File Number EB-02-AT-239
	)	
Farnell O'Quinn	)	NAL/Acct. No. 200232480012
Licensee of Radio Station WUFF	)	
Eastman, Georgia	)	FRN 0004-9860-22

**FORFEITURE ORDER**

**Adopted: August 7, 2003**

**Released: August 11, 2003**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of three thousand dollars (\$3,000) to Farnell O'Quinn ("O'Quinn"), licensee of radio station WUFF, Eastman, Georgia, for willful violation of Section 73.1350(a) of the Commission's Rules ("Rules").<sup>1</sup> The noted violation involves O'Quinn's failure to operate in accordance with the terms of the station authorization.

2. On July 8, 2002, the Commission's Atlanta, Georgia Field Office ("Atlanta Office") issued a *Notice of Apparent Liability for Forfeiture* ("NAL") in the amount of four thousand dollars (\$4,000) to O'Quinn for the noted violation.<sup>2</sup>

**II. BACKGROUND**

3. On June 11, 2002, an agent from the Atlanta Office inspected the WUFF transmitter site and antenna structure registration number 1019521 near Eastman, Georgia.<sup>3</sup> The geographical coordinates determined by the agent showed that the antenna structure was located at 32° 13' 18"N Latitude, 083° 13' 04"W Longitude. The licensed geographical coordinates for WUFF are 32° 13' 35"N Latitude, 083° 13' 10"W Longitude. The geographical coordinates specified in the structure's Antenna Structure Registration are 32° 13' 36"N Latitude, 083° 13' 10"W Longitude. This places the actual location of the WUFF transmitter site and antenna structure more than 1/3 of a mile South/Southeast of the authorized location. On July 8, 2002, the Atlanta Office issued an *NAL* in the amount of \$4,000 to O'Quinn for failure to operate in accordance with the terms of the station authorization.

4. In its response to the *NAL*, O'Quinn asserts it has never been assessed a forfeiture by the Commission. O'Quinn also argues that it has the best public file in the state and protects its airwaves by ensuring that no profanity is used on its station. With respect to the apparent violation of Section 73.1350(a), O'Quinn argues that it was unaware of the incorrect coordinates. O'Quinn claims that it hired three highly qualified engineers to provide the coordinates, and that these engineers gave O'Quinn the

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<sup>1</sup> 47 C.F.R. § 73.1350(a).

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct No. 200232480012 (Enf. Bur., Atlanta Office, released July 8, 2002).

<sup>3</sup> O'Quinn is licensee of radio station WUFF as well as owner of the antenna structure used by WUFF.

incorrect coordinates. O'Quinn adds that it has been using the same coordinates for the past 30 years. O'Quinn argues that it is a small market station and suggests that it is experiencing financial difficulties. O'Quinn claims that it has hired another engineer to file Forms 301 and 302 with the Commission and is notifying the Federal Aviation Administration of the new coordinates.<sup>4</sup> For these reasons, O'Quinn requests cancellation of the proposed forfeiture.

### III. DISCUSSION

5. The forfeiture amount in this case was proposed in accordance with Section 503(b) of the Communications Act of 1934, as amended, ("Act"),<sup>5</sup> Section 1.80 of the Rules,<sup>6</sup> 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). In examining O'Quinn'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.<sup>7</sup>

6. Rescission of the proposed forfeiture is not warranted in this case. We note that the NAL proposed a forfeiture for failure to operate in accordance with the station's authorization. Thus, O'Quinn's arguments regarding its public file and refraining from the use of profanity on its station are immaterial. Moreover, O'Quinn's argument that its engineers gave it the wrong coordinates does not provide a basis for rescission or reduction of the proposed forfeiture. The Commission has long held that licensees are responsible for the acts of its agents.<sup>8</sup> We therefore find that O'Quinn's violation of Section 73.1350 is willful.<sup>9</sup> Furthermore, O'Quinn's remedial efforts to correct the violation are not a mitigating factor.<sup>10</sup> Moreover, although O'Quinn suggests that it is unable to pay the proposed forfeiture, it does not provide any financial documentation from which we can assess its ability to pay. Therefore, we decline to cancel or reduce the proposed forfeiture on the basis of inability to pay. Finally, we will consider

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<sup>4</sup> We note that O'Quinn filed an application with the Commission on October 28, 2002, to correct the coordinates. See File No. BP-20021028AAJ. This application was granted June 2, 2003.

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>8</sup> See *Eure Family Limited Partnership*, 17 FCC Rcd 21861, 21863-64 (2002) (stating that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors and that the Commission has refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations); *Charter Communications VI, LLC*, 17 FCC 16516 (2002) (stating that licensees are responsible for the acts or omissions of their employees); *MTD, Inc.*, 6 FCC Rcd 34, 35 (1991) (stating that the Commission has long held that licensees are responsible for the negligent acts or omissions of their employees and that this responsibility is not lessened when contractors are used); *Wagenvoort Broadcasting Co.*, 35 FCC 2d 361 (1972) (stating that the negligent acts or omissions of an employee or independent contractor do not relieve a licensee of its responsibility to comply with the Commission's rules).

<sup>9</sup> The term "willful," as used in Section 503(b) of the Act, does not require a finding that the rule violation was intentional or that the violator was aware that it was committing a rule violation. Rather, the term "willful" simply requires that the violator knew it was taking the action in question, irrespective of any intent to violate the Commission's rules. Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>10</sup> See e.g., *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002); *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994); *Station KGVN, Inc.*, 42 FCC 2d 258, 259 (1973).

O'Quinn's contention that it has never been assessed a forfeiture. Based on O'Quinn's overall history of compliance, we will reduce the forfeiture amount to \$3,000.

#### IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>11</sup> Farnell O'Quinn IS LIABLE FOR A MONETARY FORFEITURE in the amount of three thousand dollars (\$3,000) for failure to operate in accordance with the terms of the station authorization in willful violation of Section 73.1350(a) of the Rules.

8. 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 Act.<sup>12</sup> Payment shall 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 note the NAL/Acct. No. and FRN referenced above. 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.<sup>13</sup>

9. IT IS FURTHER ORDERED that, a copy of this *Order* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Farnell O'Quinn, 731 College Street, Eastman, Georgia 31023.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>11</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>12</sup> 47 U.S.C. § 504(a).

<sup>13</sup> See 47 C.F.R. § 1.1914.