

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

In the Matter of)
)
Meade County Communications, Inc.) File No. EB-02-CG-083
WMMG-FM)
Brandenberg, Kentucky) NAL/Acct. No. 200332320001
)
) FRN 0003-7623-33

FORFEITURE ORDER

Adopted: January 20, 2004

Released: January 22, 2004

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 Meade County Communications, Inc. (“Meade”), for willful violation of Section 17.4(a)(2) of the Commission’s Rules (“Rules”).¹ The noted violation involves Meade’s failure to register its antenna structure.

2. On October 18, 2002, the Commission’s Chicago, Illinois, Field Office (“Chicago Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Meade for a forfeiture in the amount of three thousand dollars (\$3,000).² Meade filed its response to the *NAL* on November 8, 2002.

II. BACKGROUND

3. Meade is the licensee of radio station WMMG-FM in Brandenberg, Kentucky, and is the owner of that station’s antenna structure. Following his inspection of WMMG-FM on February 5, 2002, an agent from the Chicago Office searched the Commission’s antenna registration records and determined that the WMMG-FM tower was not registered, in violation of Section 17.4(a)(2) of the Rules.

4. The Chicago Office issued a *Notice of Violation* to Meade on February 26, 2002, for the violation. In its response, dated March 4, 2002, Meade stated that it had registered WMMG-FM’s tower following the inspection. On October 18, 2002, the Chicago Office issued a *NAL* to Meade for a forfeiture in the amount of \$3,000 for willful violation of Section 17.4(a)(2). In its response, Meade seeks cancellation or reduction of the proposed monetary forfeiture. Meade argues that its failure to register the antenna structure was not a willful. In addition, Meade asserts that it is unable to pay the proposed forfeiture amount at this time but is willing to enter into a payment plan.

¹ 47 C.F.R. § 17.4(a)(2).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332920001 (Enf. Bur., Chicago Office, released July 31, 2002).

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),³ Section 1.80 of the Rules,⁴ 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 Meade’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.⁵

6. Section 17.4(a)(2) of the Rules required the owners of existing antenna structures that were assigned painting or lighting requirements before July 1, 1996, to register those antenna structures no later than July 1, 1998. WMMG-FM’s tower was subject to this requirement.⁶ On the basis of the FCC agent’s investigation and Meade’s response, we find that the antenna structure was not registered until after the inspection on February 5, 2002, and that Meade violated Section 17.4(a)(2) by failing to register it. Meade asserts, through its general manager, that its failure to register the antenna structure “was not a willful act as much as it was an act that fell through the cracks . . . of the engineer that was filing the registration and myself for not checking with him to make sure it was done.” As the Commission recently reiterated, “the Commission has long held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors and has consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations.”⁷ Meade is, therefore, chargeable with knowledge of its engineer’s failure to register WMMG-FM’s antenna structure.⁸ We find, therefore, that Meade’s violation of Section 17.4(a)(2) was willful.⁹

7. Meade contends that it is unable to pay the proposed forfeiture amount at this time. In support of its claim of financial hardship, Meade has submitted its federal income tax returns for tax years 1999, 2000 and 2001. The Commission has determined that, in general, a licensee’s gross revenues are

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ The Commission’s TOWPUB tower data base indicates that WMMG’s tower was assigned painting or lighting requirements before July 1, 1996.

⁷ *Eure Family Limited Partnership*, 17 FCC Rcd 21861, 21863-64 (2002) (internal quotation marks omitted) and cases cited therein.

⁸ See *Pinnacle Towers, Inc.*, 18 FCC Rcd 16365 (Enf. Bur. 2003).

⁹ 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).

the best indicator of its ability to pay a forfeiture.¹⁰ After reviewing the financial data submitted, we find no evidence in Meade's response that would support cancellation of the forfeiture or a reduction based upon financial hardship.¹¹ However, as explicitly stated in the *NAL* and set forth below in paragraph 10, Meade may submit a request for full payment of the forfeiture under an installment plan consistent with the instructions below.

8. We have examined Meade'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 Meade willfully violated Section 17.4(a)(2) of the Rules and find that neither cancellation nor reduction of the proposed monetary forfeiture is warranted.

IV. ORDERING CLAUSES

9. 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,¹² Meade **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand dollars (\$3,000) for failure to register its antenna structure, in willful violation of Section 17.4(a)(2) of the Rules.

10. 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.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. 200332320001 and FRN 0003-7623-33. In response to Meade's request for an installment plan, requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁴

¹⁰ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992).

¹¹ See *PJB Communications*, 7 FCC Rcd at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Afton Communications Corp.*, 7 FCC Rcd 6741 (Com. Car. Bur. 1992) (forfeiture not deemed excessive where it represented approximately 3.9 percent of the violator's gross revenues).

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

¹³ 47 U.S.C. § 504(a).

¹⁴ See 47 C.F.R. § 1.1914.

11. **IT IS FURTHER ORDERED** that copies of this *Order* shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Meade County Communications, Inc., 1715 Bypass Road, P.O. Box 505, Brandenberg, Kentucky 40108-0505.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau