

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

In the Matter of)	
)	
MRJ, Inc.)	File Number EB-02-CF-569
WWYO)	NAL/Acct. No. 200332340002
Pineville, West Virginia)	FRN: 0005-9955-50
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: May 10, 2004

Released: May 12, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“*Order*”), we cancel the proposed monetary forfeiture in the amount of twenty-two thousand dollars (\$22,000) issued to MRJ, Inc. (“MRJ”), the licensee of WWYO, Pineville, West Virginia. We find that MRJ failed to conduct weekly EAS tests of the EAS header and EOM codes, failed to register its antenna structure with the Commission and failed to enclose the AM antenna in an effective locked fence in apparent willful and repeated violation of Sections 11.52(a), 17.4, and 73.49 and failed to allow access to the public inspection file in apparent willful violation of 73.3256(c) of the Commission’s Rules (“Rules”)¹. While we cancel the forfeiture for a demonstrated inability to pay, we admonish MRJ for its willful and repeated violation of Sections 11.52(a), 17.4, 73.49 of the Rules and its willful violation of Section 73.3526(c) of the Rules.

II. BACKGROUND

2. On August 14, 2002, an agent from the Commission’s Columbia, Maryland Office (“Columbia Office”) conducted an inspection of Station WWYO, Pineville, West Virginia, for compliance with Commission Rules. Following issuance of a Notice of Violation for numerous Rules violations, and a Continuation of Notice of Violation, the licensee replied on September 30, 2002.

3. On December 26, 2002, the Columbia Office released a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to MRJ for a forfeiture in the amount of twenty-two thousand dollars (\$22,000) for violations of Sections 11.52(a), 17.4, 73.49 and 73.3526(c) of the Rules.² MRJ filed a response on January 17, 2003. In its response, the licensee does not challenge the findings of the *NAL*, and states that they are continuing to work on and correct problems identified in the *NAL*. Additionally, MRJ seeks reduction or cancellation of the forfeiture based upon its unique role in its community, its commitment to continued remedial action and remedial actions taken so far and its claimed inability to pay.

¹ 47 C.F.R. §§ 11.52(a), 17.4, 73.49 and 73.3526(c).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332340002 (Enf. Bur., Columbia Office, released December 26, 2002).

III. DISCUSSION

4. 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*.⁵ In examining MRJ’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 such other matters as justice may require.⁶

5. Section 11.52(a) of the Rules requires that broadcast stations perform weekly tests of the EAS header and EOM codes. The agent could not find any record to indicate that the required weekly tests of the EAS header and EOM codes had been performed during the period June 18, 2002 to August 13, 2002.

6. Section 17.4 of the Rules requires antenna structures that are over 200 feet in height be registered with the Commission. As of the adoption date of this Order, MRJ has not registered the 331-foot antenna structure.

7. Section 73.49 of the Rules requires that antennas that have radio frequency potential (voltage) at the base of the tower must be enclosed within an effective locked fence or other enclosure to protect the public. The agent found that the metal poles supporting the fence gate were rusted off at ground level and unable to provide adequate support for the gate. In addition, the top half of the gate had the wire mesh drawn back allowing access to the base of the tower, making the base of the tower a safety hazard to the public.

8. Section 73.3526(c) of the Rules requires that the public inspection file be available for public inspection at any time during normal business hours. At the inspection, the station personnel were unable to produce the file.

9. Based on the findings of the *NAL* and MRJ’s response thereto, we find that MRJ’s violations of Sections 11.52(a), 17.4, and 73.49 of the Rules were willful⁷ and repeated⁸ and its violation of Section

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁶ 47 U.S.C. § 503(b)(2)(D)

⁷ 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).

⁸ As provided by 47 U.S.C. § 312(f)(2), a continuous violation is “repeated” if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company, id.* at 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn 56 (2003).

73.3526(c) was willful.

10. In support of its request for cancellation or reduction, MRJ cites its value to its “poverty stricken” community as a vital provider of emergency news information, a distribution point for emergency relief supplies and the only news station operating on the weekend in the area. MRJ also says that it has hired contractors to repair the base fencing and correct the other infractions and “work on all of the problems.” The fact that MRJ may perform useful service in the community does not mitigate its violations. Similarly, MRJ’s remedial repair action subsequent to notification of the violation does not warrant cancellation or reduction of the proposed forfeiture.⁹ It is well established that “corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations.”¹⁰

11. MRJ also submits federal income tax returns for years 2000, 2001, and 2002 to demonstrate its inability to pay the monetary forfeiture.¹¹ The Commission has determined that, in general, a licensee’s gross revenues are the best indicator of its ability to pay a forfeiture.¹² After reviewing the financial documentation submitted, we conclude that payment of the proposed \$22,000 forfeiture would impose financial hardship and we will cancel the proposed forfeiture. Nevertheless, we find that it is appropriate to admonish MRJ for its willful and repeated violation of Sections 11.52(a), 17.4, and 73.49 of the Rules and its willful violation of Section 73.3526(c) of the Rules.¹³

12. As of the adoption date of this *Order*, MRJ has not provided evidence that it has complied with Section 17.4 of the Rules. Accordingly, we will require, pursuant to Section 308(b) of the Act,¹⁴ that MRJ report to the Enforcement Bureau no more than thirty (30) days following the release of this *Order* whether it has come into compliance with Section 17.4 by registering its antenna structure with the Commission. MRJ’s report must be submitted in the form of an affidavit or declaration, under penalty of perjury, signed by an officer or director of the licensee. MRJ should note that its continued noncompliance could result in additional enforcement action by the Enforcement Bureau.

⁹ See *KGVB, Inc.*, 42 FCC 2d 258, 259 (1973).

¹⁰ *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994).

¹¹ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992) (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 See *PJB Communications of Virginia, Inc.* at 2088, 2089.

¹³ See *Faith Bible College, Inc.*, Memorandum Opinion and Order, File No. EB-02-TP-221, NAL/Acct. No. 200232700010.

¹⁴ 47 U.S.C. § 308(b).

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act¹⁵, and sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules¹⁶, the forfeiture in the amount of twenty-two thousand dollars (\$22,000) proposed in the December 26, 2002 NAL issued to MRJ, **IS CANCELLED**.

14. **IT IS FURTHER ORDERED THAT MRJ IS ADMONISHED** for failure to conduct weekly EAS tests of the EAS header and EOM codes, failure to register its antenna structure with the Commission and failure to enclose the AM antenna in an effective locked fence in willful and repeated violation of Sections 11.52(a), 17.4, and 73.49 of the Rules and failure to allow access to the public inspection file in willful violation of 73.3526(c) of the Rules.

15. **IT IS FURTHER ORDERED** that, pursuant to Section 308(b) of the Act, MRJ must submit the report described in Paragraph 12 above, no more than thirty (30) days following the release of this Order, to the Federal Communications Commission, Spectrum Enforcement Division, 445 12th Street, S.W., Room 4-A223, Washington, D.C. 20554, Attention: Emmitt Carlton, Esq.

16. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by Certified Mail, Return Receipt Requested, to MRJ, Inc., P.O. Box 647, Bluefield, West Virginia 24701.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁵ 47 U.S.C. § 503(b).

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