

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

In the Matter of)	
)	
Minority Business and Housing)	
Development, Inc.,)	File No. EB-02-PA-200
Licensee of FM Station WYGG)	NAL/Acct. No. 200332400003
Asbury Park, New Jersey)	FRN 0007-5125-28

MEMORANDUM OPINION AND ORDER

Adopted: May 18, 2004

Released: May 20, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“*Order*”), we deny the petition for reconsideration filed by Minority Business and Housing Development, Inc. (“MBHD”), licensee of FM Station WYGG, Asbury Park, New Jersey, of the *Forfeiture Order* issued on May 7, 2003.¹ The *Forfeiture Order* imposed a monetary forfeiture in the amount of thirteen thousand dollars (\$13,000) against MBHD for its failure to operate its station as authorized and to install Emergency Alert System (“EAS”) equipment at the station, in willful and repeated violation of Sections 73.1350(a) and 11.35(a) of the Commission’s Rules (“Rules”).²

II. BACKGROUND

2. In 2002, the Commission’s Philadelphia, Pennsylvania Field Office (“Field Office”) conducted on-site inspections of, and investigated a complaint regarding, Station WYGG’s operations. The Field Office’s investigation resulted in the issuance of Notices of Violations on May 30, 2002,³ and July 24, 2002,⁴ and ultimately the issuance of a *Notice of Apparent Liability for Forfeiture* (“NAL”) on

¹ *Minority Business and Housing Development, Inc.*, 18 FCC Rcd 9422 (Enf. Bur.2003). It should be noted that the *Forfeiture Order* erred in designating Station WYGG’s community of license as Uniondale, New York (instead of Asbury Park, New Jersey).

² 47 C.F.R. §§ 73.1350(a) and 11.35(a).

³ Official Notice of Violation, EB-PA-02-200 (Enf. Bur., Philadelphia, Pennsylvania Field Office, May 30, 2002).

⁴ Official Notice of Violation, EB-PA-02-200 (Enf. Bur., Philadelphia, Pennsylvania Field Office, July 24, 2002).

December 30, 2002.⁵ The *NAL* found that MBHD had been transmitting from an antenna – at a location and a height -- not specified by its authorization,⁶ in apparent willful and repeated violation of Section 73.1350 of the Rules. The *NAL* further found that MBHD had never installed EAS equipment in apparent willful and repeated violation of Section 11.35(a) of the Rules. The *NAL* thus proposed a \$13,000 forfeiture against MBHD (a \$5,000 forfeiture for its failure to comply with the specifications of its authorization, and a \$8,000 forfeiture for its failure to comply with the EAS equipment requirements).

3. The Enforcement Bureau (“Bureau”) released a *Forfeiture Order* on May 7, 2003,⁷ having had no record of receiving a response to the *NAL*. On May 30, 2003, the Bureau received MBHD’s response to the *NAL*.⁸ In its response, MBHD did not dispute the *NAL*’s findings, but nevertheless sought cancellation or reduction of the forfeiture amount based on its remedial efforts and its inability to pay.

III. DISCUSSION

4. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),⁹ Section 1.80 of the Rules,¹⁰ and the *Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.¹¹ In assessing forfeitures, Section 503(b)(2)(D) of the Act requires that we 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.¹² As discussed below, having considered MBHD’s response in light of the statutory factors, we do not find that cancellation or reduction of the forfeiture amount is warranted.

5. MBHD represented that, after receiving the 2002 *Notices of Violation*, it undertook corrective actions, which included filing applications for modification¹³ and for special temporary authority,¹⁴

⁵ *Minority Business and Housing Development, Inc.*, NAL/Acct. No. 200332400003 (Enf. Bur. Philadelphia, Pennsylvania Field Office, released December 30, 2002).

⁶ Specifically, the *NAL* found that the station was authorized to operate with overall antenna height of 14 meters (45.9 feet) above ground level from 517 Cookman Avenue, Asbury Park, New Jersey, but that it was operating with an overall antenna height of 43.9 meters (144 feet) from 601 Bangs Avenue, Asbury Park, New Jersey.

⁷ See note 1, *supra*.

⁸ See Letter from James E. Price, President, Sterling Communications, Inc. to Susan Donahue, Chief, Revenue and Receivables Operations Group, Federal Communications Commission (received by Enf. Bur. May 30, 2003). Because MBHD’s response was received within thirty (30) days of the release of the *Forfeiture Order*, we will consider and treat the response as a petition for reconsideration of that *Order*. See 47 C.F.R. § 1.106(b).

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 C.F.R. § 1.80.

¹¹ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

¹² 47 U.S.C. § 503(b)(2)(D).

¹³ File No. BPED-20020808ADH. (August 8, 2002) (status: accepted for filing, but not granted).

installing EAS equipment, as well as maintaining station logs and other requisite information files. MPHD's undertook its remedial efforts after the Field Office's investigation, notice and action. MPHD's subsequent remedial actions, while commendable, did not mitigate and thus did not present any basis that would warrant reduction or cancellation of the assessed forfeiture for each of its violations.¹⁵

6. MPHD further represented that it is a "small minority owned and operated entity," and that it is unable to pay the assessed \$13,000 forfeiture. In support, MPHD submitted a December 2002 bank statement. As the *NAL* correctly noted, we will consider adjusting or canceling a forfeiture on the basis of an inability to pay claim if sufficient financial documentation is provided (*i.e.*, "federal tax returns for the most recent three-year period, financial statements prepared according to generally accepted accounting practices, or some other reliable and objective documentation that accurately reflects the petitioner's current financial status").¹⁶ MPHD's submission of a single bank statement did not suffice and thus did not present any basis that would warrant reduction or cancellation of the assessed forfeiture for each of its violations.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to Sections 503(a) and (b) of the Act,¹⁷ and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁸ Minority Business and Housing Development, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of thirteen dollars (\$13,000) for its failure to comply with the terms and conditions of its authorization and its failure to comply with the EAS requirements, in willful and repeated violation¹⁹ of Sections 73.1350(a) and 11.35(a) of the Rules.²⁰

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.²¹ 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. 200332400003 and FRN

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¹⁴ File No. BSTA-20020906ACE (August 9, 2002) (status: accepted for filing, but not granted).

¹⁵ See, e.g., *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21861, 21864-75 (2002); *Sonderling Broadcasting Corp.*, 69 FCC 2d 289, 291 (1978); *Odino Joseph*, 18 FCC Rcd 16522, 16524 ¶ 8 (Enf. Bur. 2003); *South Central Communications Corp.*, 18 FCC Rcd 700, 702-03 ¶ 9 (Enf. Bur. 2003); *Northeast Utilities*, 17 FCC Rcd 4115, 4117 ¶ 13 (Enf. Bur. 2002); *AM Broadcast Station KTNC and C.R. Communications, Inc.*, DA 99-2960 ¶ 5 (Enf. Bur. 1999).

¹⁶ *NAL* at ¶ 10.

¹⁷ 47 U.S.C. §§ 503(a) and (b).

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

¹⁹ See 47 U.S.C. § 312(f); see also *Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4387-88 ¶ 5 (1991).

²⁰ 47 C.F.R §§ 73.1350(a) and 11.35(a).

²¹ 47 U.S.C. § 504(a).

0007-5125-28. 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. 20554.²²

9. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Minority Business and Housing Development, Inc., 612 Leonard Avenue, Uniondale, New York 11553, and its consultant, James E. Price, Sterling Communications, Inc., 219 Dodd Road, Ringgold, Georgia 30736.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

²² See 47 C.F.R. § 1.1914.