

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

In the Matter of)	
)	
Marion R. Williams)	
Licensee of AM Broadcast Station WONG)	File No.: EB-03-OR-060
In Canton, Mississippi)	NAL/Acct. No. 200332620014
Gary, Indiana)	FRN 0008-5822-31
)	
)	
)	

FORFEITURE ORDER

Adopted: August 5, 2004

Released: August 9, 2004

By the Chief, Enforcement Bureau:

1. In this *Forfeiture Order* ("Order") we issue a monetary forfeiture in the amount of nine thousand, two hundred dollars (\$9,200) to Marion R. Williams ("Williams"), licensee of AM broadcast Station WONG, Canton, Mississippi, for willful violation of Sections 73.49 and 73.3526(c)(1) of the Commission's Rules ("Rules").¹ The noted violations involved Williams's failure to enclose the station's antenna tower within an effective locked fence or other enclosure and to make most required items in the station's public inspection file available for public inspection during regular business hours.

2. In an April 14, 2003 *Notice of Apparent Liability for Forfeiture* ("NAL"),² the Commission's New Orleans, Louisiana Office ("New Orleans Office") proposed a monetary forfeiture in the amount of \$17,000 to Williams. Williams does not contest the subject violations. Williams filed a response to the *NAL* on May 16, 2003, and supplemented his response on July 21 and 23, 2004.

3. The forfeiture amount in this case was proposed 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 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.⁶

¹ 47 C.F.R. §§ 73.49 and 73.3526(c)(1).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332620014 (Enf. Bur., New Orleans Office, released April 14, 2003).

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) ("*Forfeiture Policy Statement*").

⁶ 47 U.S.C. § 503(b)(2)(D).

4. To the extent that Williams suggests that plans were underway to address the violations before the inspection, Williams has failed to provide any documentation to support such an assertion. Williams also seeks mitigation, stating that he has remedied the defects identified in the Commission inspection. However, no mitigation is warranted on the basis of Williams's correction of the violations. As the Commission stated in *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994), "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."⁷

5. In support of his request for cancellation or reduction of the proposed forfeiture, Williams submits financial data, including federal income tax returns for years 2000 and 2001.⁸ The Commission has determined that, in general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.⁹ After considering the financial documentation submitted, we conclude that reduction of the forfeiture amount to \$9,200 is appropriate.¹⁰

6. We have examined Williams'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 Williams willfully¹¹ violated Sections 73.49 and 73.3526(c)(1) of the Rules, but we reduce the forfeiture proposed for these violations from \$17,000 to \$9,200, based on Williams's financial showing.

7. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act,¹² and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,¹³ Marion R. Williams **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of nine thousand, two hundred dollars (\$9,200) for willful violation of Sections 73.49 and 73.3526(c)(1) 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.¹⁴ Payment shall be made by mailing a check or similar instrument, payable to the order of the

⁷ See also *Callais Cablevision, Inc.*, 17 FCC Rcd 22626, 22629 (2002); *Radio Station KGVV, Inc.*, 42 FCC 2d 258, 259 (1973); and *Executive Broadcasting Corp.*, 3 FCC 2d 699, 700 (1966).

⁸ In support of his reduction request, Williams also states that his operation is a small business entity. However, it is well established that reliance on small business status alone is insufficient. See *Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17109 ¶¶ 51-52 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); see also *Jerry Szoka*, 14 FCC Rcd 20147, 20150 ¶¶ 9-10 (1999).

⁹ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992).

¹⁰ *Id.* 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).

¹¹ 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).

¹² 47 U.S.C. § 503(b).

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

¹⁴ 47 U.S.C. § 504(a).

“Federal Communications Commission,” to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN) and the NAL/Acct. No. referenced in the caption. 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. 20554.¹⁵

9. **IT IS FURTHER ORDERED THAT** a copy of this *Order* shall be sent by first class mail and certified mail, return receipt requested, to Marion R. Williams, 7606 Harold Avenue, Gary, Indiana 46403.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁵ See 47 C.F.R. § 1.1914.