

**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 Stations WUFF(AM))	
and WUFF- FM)	FRN 0004-9860-22
Eastman, Georgia)	

MEMORANDUM OPINION AND ORDER

Adopted: September 1, 2004

Released: September 3, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“*Order*”), we deny a petition for reconsideration filed by Mr. Farnell O’Quinn, licensee of radio stations WUFF (AM) and WUFF-FM (“the O’Quinn stations”), Eastman, Georgia, and owner of those stations’ antenna structure (antenna registration number 1019521); and we affirm the *Forfeiture Order*¹ issued August 11, 2003, in the amount of three thousand dollars (\$3,000) for willful violation of Section 73.1350(a) of the Commission’s Rules (“Rules”).² The noted violation involves Mr. O’Quinn’s failure to operate the O’Quinn stations in accordance with the terms of their station authorizations.

II. BACKGROUND

2. On June 11, 2002, an agent from the Commission’s Atlanta, Georgia, Field Office (“Atlanta Office”) inspected the O’Quinn stations’ transmitter site and antenna structure near Eastman, Georgia. The agent determined through the Global Positioning System (“GPS”) that the O’Quinn stations’ antenna structure was located at 32° 13' 18"N Latitude, 083° 13' 04"W Longitude. The O’Quinn stations’ licensed geographical coordinates were 32° 13' 35"N Latitude, 083° 13' 10"W Longitude. This placed the actual location of the O’Quinn stations’ antenna structure more than 1/3 of a mile South/Southeast of the authorized location.³

3. On July 8, 2002, the Atlanta Office issued an *NAL*⁴ in the amount of \$4,000 to Mr.

¹ *Farnell O’Quinn*, 18 FCC Rcd 16354 (Enf. Bur. 2003).

² 47 C.F.R. § 73.1350(a).

³ We note that Mr. O’Quinn filed an application with the Commission on October 28, 2002, to correct the coordinates of WUFF(AM). *See* File No. BP-20021028AAJ. That application was granted June 2, 2003. In addition, Mr. O’Quinn filed an application with the Commission on October 25, 2002, to correct the coordinates of WUFF-FM. *See* File No. BPH-20021025AAB. That application is pending.

⁴ *Notice of Apparent Liability for Forfeiture*, NAL/Acct No. 200232480012 (Enf. Bur., Atlanta Office, released July 8, 2002).

O'Quinn for failure to operate in accordance with the terms of the O'Quinn stations' authorizations. Mr. O'Quinn requested cancellation of the forfeiture in his response to the *NAL*. In the *Forfeiture Order*, we imposed a forfeiture of \$3,000 on Mr. O'Quinn for willful violation of Section 73.1350(a) of the Rules. We reduced the proposed forfeiture amount because of Mr. O'Quinn's history of overall compliance. In his petition for reconsideration, Mr. Quinn again requests cancellation of the forfeiture. Mr. O'Quinn objects to being "termed a violator" and argues that the forfeiture is an insult to his forty (40) year record of running a top-notch small market station in a town of 6,000. He also argues that the Commission renewed his license without informing him that the O'Quinn stations' coordinates were incorrect; that the Commission never told him "about changing out the analog readings"; and that the coordinates he received from his engineers were "correct at the time." Additionally Mr. O'Quinn argues that he did not willfully violate Section 73.1350(a) of the Rules and that payment of the forfeiture would be a financial hardship. Finally, Mr. O'Quinn states that the FCC agent said that the District Director of the Atlanta Office was going to recommend against a monetary forfeiture.

III. DISCUSSION

4. Mr. O'Quinn objects to being "termed a violator." However, it is undisputed the O'Quinn stations' transmitter site was located at about 1/3 of a mile from their authorized location and that their operation from that site was not in accordance with the terms of the stations' authorization. We, therefore, affirm the conclusion that Mr. O'Quinn's operation from that site violated the terms of his station authorizations and thereby violated Section 73.1350(a) of the Rules.

5. Mr. O'Quinn contends that the Commission renewed his license without informing him that the O'Quinn stations' coordinates were incorrect; that the Commission never told him "about changing out the analog readings"; and that the coordinates he received from his engineers were "correct at the time." All of these arguments are apparently based on the incorrect belief that the availability of the GPS technology imposes a new or different requirement on broadcast licensees. Broadcast licensees were and still are required to provide accurate coordinates for their transmitter sites and to operate their stations from the authorized coordinates. The availability of the GPS technology does not change these requirements; GPS simply provides an additional means of determining the correct coordinates. Thus, the coordinates Mr. O'Quinn received from his engineers were not "correct at the time"; they were and remain incorrect.

6. Mr. O'Quinn contends his violation of Section 73.1350(a) was not willful. He argues that "the FCC never told us this had to be done" and he "had no idea . . . that our coordinates needed to be upgraded to [GPS]." These arguments also are based on the incorrect belief that the use of GPS to determine broadcast station coordinates imposes a new or different requirement on broadcast licensees. In addition, Mr. O'Quinn argues that his actions do not fit a dictionary definition of "willful": "done deliberately: intentional." This is not the definition of "willful" that the Commission uses. The term "willful," as used in Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁵ does not require a finding that the rule violation was intentional or that the violator was aware that it was committing a rule violation. Section 312(f)(1) of the Act,⁶ which applies to violations for which forfeitures are assessed under Section 503(b), 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 act of operating the O'Quinn stations from their actual location was conscious and deliberate and, therefore, willful even though Mr. O'Quinn was unaware that

⁵ 47 U.S.C. § 503(b).

⁶ 47 U.S.C. § 312(f)(1).

the location was unauthorized.⁷ We affirm the conclusion that Mr. O'Quinn's violation of Section 73.1350(a) of the Rules was willful.

7. In the *Forfeiture Order*, we gave Mr. O'Quinn credit for his history of overall compliance and reduced the forfeiture amount from \$4,000 to \$3,000. Mr. O'Quinn's "record of forty (40) years of running a top-notch small market station in a town of 6,000" does not warrant further reduction or cancellation of the forfeiture.

8. Mr. O'Quinn again asserts that he is unable to pay the proposed forfeiture but again does not provide any financial documentation from which we can assess his ability to pay.⁸ Therefore, we again decline to cancel or reduce the proposed forfeiture on the basis of inability to pay.

9. We have considered the forfeiture amount and we have examined Mr. O'Quinn's petition for reconsideration pursuant to the statutory factors prescribed by Section 503(b)(2)(D) of the Act,⁹ and in conjunction with the *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*,¹⁰ as well. As a result of our review, we conclude that Mr. O'Quinn willfully violated Section 73.1350(a) of the Rules and find that neither cancellation nor reduction of the monetary forfeiture is appropriate.¹¹

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act¹² and Section 1.106 of the Rules,¹³ Mr. O'Quinn's petition for reconsideration of the *Forfeiture Order* **IS DENIED** and the *Forfeiture Order* **IS AFFIRMED**.

11. 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 of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No.

⁷ See *KM Radio of St. Louis, L.L.C.*, 19 FCC Rcd 5847, 5851-52 (2004).

⁸ As stated in the *NAL*, the Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. *NAL* at para. 10. The Commission has long recognized that gross revenues are the primary indicator of a licensee's ability to pay a forfeiture. See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) (finding that gross receipts are a "very useful yardstick" in analyzing a company's financial condition for forfeiture purposes).

⁹ 47 U.S.C. § 503(b)(2)(D).

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

¹¹ Mr. O'Quinn claims that the FCC agent said that the District Director of the Atlanta Office was going to recommend against a monetary forfeiture. We note, however, that, even assuming *arguendo* that the agent stated that the District Director was going to *recommend* that there not be a forfeiture and even assuming *arguendo* that such an agent statement would bind the Bureau, Mr. O'Quinn was never informed that no forfeiture would be imposed.

¹² 47 U.S.C. § 405.

¹³ 47 C.F.R. § 1.106.

¹⁴ 47 U.S.C. § 504(a).

referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. 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

12. **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

¹⁵ See 47 C.F.R. § 1.1914.