

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

In the Matter of)	
)	
FBS Wireless Corporation)	File No. EB-02-PA-140
Licensee of Station WFBS(AM))	NAL/Acct. No. 200232400007
Berwick, Pennsylvania)	FRN 0006-7296-02
)	

MEMORANDUM OPINION AND ORDER

Adopted: October 14, 2004

Released: October 18, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“*Order*”), we deny the November 21, 2003 petition for reconsideration filed by FBS Wireless Corporation (“FBS”), licensee of Station WFBS(AM), Berwick, Pennsylvania. FBS seeks reconsideration of an October 20, 2003 *Forfeiture Order*,¹ in which the Enforcement Bureau imposed a monetary forfeiture in the amount of twenty thousand dollars (\$20,000) for repeated violation of Sections 17.4(a), 17.51(a), and 73.49 of the Commission’s Rules (Rules).² The noted violations involve FBS’s failure to register and light the antenna structure for station WFBS(AM) and to enclose that antenna structure within an effective locked fence. In its petition for reconsideration, FBS raises five issues: the coordinates of its tower; the height of its tower; the aeronautical study concerning its tower; the fencing around the tower; and, the Commission’s approval of the transfer of station WFBS(AM) to it notwithstanding the violations existing at the time. FBS does not raise any new arguments nor does it provide any new facts relating to the issues addressed in the *Forfeiture Order*, specifically, the tower height (at paragraph 10); aeronautical study (at paragraph 11) and fencing (at paragraph 12). Accordingly, we do not readdress those issues and confine this *Order* to the questions raised with respect to the tower coordinates and the Commission’s failure to note the outstanding violations at the time it approved the transfer of station WFBS.

II. DISCUSSION

2. The first new argument that FBS makes is that, until approximately August, 2003, the exact coordinates of the FBS tower were not known, making proper registration impossible. However, not knowing the exact coordinates of the FBS tower did not prevent FBS from registering the tower during the period covered by the *NAL* that was subsequent to August, 2003, nor did it prevent FBS from lighting the structure. The authorization for station WBRX, now station WFBS, dated July 23, 1975, indicated the antenna structure should be lighted. Thus, the WFBS antenna structure should have been lighted up until August 11, 2003, when the FAA removed the painting and lighting requirements because

¹ *FBS Wireless Corporation*, 18 FCC Rcd 9582 (Enf. Bur. 2003).

² 47 C.F.R. §§ 17.4(a), 17.51(a), and 73.49.

of an adjacent, shielding tower.³ Because the WFBS antenna structure had painting and lighting requirements, it was also required to be registered with the Commission.⁴

3. Secondly, FBS argues that the WFBS antenna structure has been in violation of the Commission's tower rules since before station WFBS, then WSQV, and the antenna structure were transferred to FBS on March 19, 2000. FBS asserts that because the Commission approved the transfer and licensing of WFBS even though it was in violation of the Commission's own rules, this should impact the Enforcement Bureau's determination in this proceeding. We do not agree. The Commission approved the transfer of station WFBS based upon the information that was provided it during the transfer process. The parties involved in the transfer were responsible for providing accurate information to the Commission. Moreover, once the transfer was approved, FBS became responsible for knowing and complying with the Commission's rules.⁵ FBS was responsible for registering and lighting its antenna structure in accordance with the Commission's rules without regard to the behavior of its predecessor. It did neither.

III. ORDERING CLAUSES

4. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended⁶ and Section 1.106 of the Rules,⁷ FBS Wireless Corporation's petition for reconsideration, filed November 21, 2003, **IS DENIED** and the issuance of the \$20,000 forfeiture **IS AFFIRMED**.

5. 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.⁸ 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. 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. 20554.⁹

³ See Federal Aviation Administration Aeronautical Study No. 2003-AEA-2360-OE, dated August 11, 2003.

⁴ See 47 C.F.R. § 17.4(a)(2).

⁵ See *Aracelis Ortiz, Executrix for the Estate of Carlos Ortiz*, 19 FCC Rcd 2632 (Enf. Bur. 2004).

⁶ 47 U.S.C. § 405.

⁷ 47 C.F.R. § 1.106.

⁸ 47 U.S.C. § 504(a).

⁹ See 47 C.F.R. § 1.1914.

6. **IT IS FURTHER ORDERED THAT** this *Order* shall be sent by first class mail and certified mail, return receipt requested, to FBS Wireless Corporation, 114 Market Street, 2nd Floor, Berwick, Pennsylvania 18603.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau