

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

In the matter of)	
)	
SAGA COMMUNICATIONS OF NEW ENGLAND, INC.)	File No. EB-01-IH-0230
)	NAL/Acct. No. 20043208000014
)	
Licensee of Station WLZX(FM), Northampton, Massachusetts)	Facility ID No. 46963
)	FRN No. 0002749406

FORFEITURE ORDER

Adopted: October 13, 2004

Released: October 15, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we impose a forfeiture of \$4,000 against Saga Communications of New England, Inc. (“Saga”), licensee of Station WLZX(FM), Northampton, Massachusetts, for violating section 73.1206 of the Commission’s rules¹ by broadcasting a telephone conversation without first informing the other party to the conversation of its intention to do so.

II. BACKGROUND

2. On February 19, 2004, we issued a Notice of Apparent Liability (“NAL”)² for \$4,000, based on a complaint by Western Mass Radio Company (“Western”), licensee of Station WRNX(FM), Amherst, Massachusetts. The complaint alleged that Saga broadcast a telephone conversation between Station WLZX(FM) radio personality Christopher Laursen and Station WRNX(FM) radio personality Dave Sears without prior notice to Mr. Sears. According to the complaint, Mr. Laursen called Mr. Sears and pretended to be a WRNX listener.³

3. On March 22, 2004, Saga responded to the NAL,⁴ stating that the Commission should cancel the NAL because Saga’s conduct was not willful. Additionally, Saga stated that the Enforcement Bureau should, at a minimum, have reduced the amount of the forfeiture based upon Saga’s “good faith and history of overall compliance.”⁵

¹47 C.F.R. § 73.1206.

²See *Saga Communications of New England, Inc.*, Notice of Apparent Liability, 19 FCC Rcd 2741 (Enf. Bur. 2004).

³See Letter from Thomas G. Davis, President, Western Mass Radio Company, to Magalie Roman Salas, Secretary, Federal Communications Commission, dated February 1, 2001 (“Western Complaint”).

⁴See *Saga Communications of New England, LLC*, Response to Notice of Apparent Liability for Forfeiture, March 22, 2004 (“Saga NAL Response”).

⁵See *id.* at 7.

III. DISCUSSION

4. Saga argues that the forfeiture should be cancelled because Saga's conduct in this matter "was not willful."⁶ Saga concedes that its employee, Mr. Laursen, deliberately called Mr. Sears and broadcast their conversation on January 25, 2001, without notice to Mr. Sears.⁷ Saga, however, "does not believe that the one-time isolated broadcast by an employee, against the directive of his employer, of an unauthorized telephone conversation is a 'willful' violation," and that it "should not be held liable for a forfeiture for willful violation when it has taken all reasonable precautions to avoid a violation, but an employee went 'haywire' and violated the rule."⁸ Saga argues that even if Mr. Laursen acted "willfully" in violating the Commission's rule, Saga's precautions and policy prohibiting such violations should forestall such a finding with respect to the company.⁹

5. We reject Saga's argument. As Saga acknowledges, a "willful" violation under section 503(b) means "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.¹⁰ As Saga also acknowledges,¹¹ the "Commission has long held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors,"¹² and when the actions of independent contractors or employees have resulted in violations, the Commission has "consistently refused to excuse licensees from forfeiture penalties."¹³ Nothing in the record here suggests that this precedent is inapposite.

6. The NAL proposed a \$4,000 forfeiture against Saga, which is the base forfeiture amount established under the *Forfeiture Policy Statement* for the unauthorized broadcast of a telephone

⁶Saga cites section 503(b)(1)(B) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. §503(b)(1)(B), which authorizes the Commission to assess forfeitures against those who have "willfully or repeatedly failed to comply with any of the provisions of this Act or of any rule, regulation, or order issued by the Commission." See *id.* at 2-3.

⁷*Id.* at 2.

⁸*Id.* at 4.

⁹*Id.* at 3-5.

¹⁰*Id.* at 2-3 (citing *Application for Review of Southern Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991)).

¹¹*Id.* at 4-5 (stating "[L]icensees are responsible for the acts of their employees").

¹²*Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64 ¶ 7 (2002); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34 (1991) (holding that a company's reliance on an independent contractor to construct a tower in compliance of FCC rules does not excuse that company from a forfeiture); *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972) (holding a licensee responsible for violations of FCC rules despite its reliance on a consulting engineer); *Wings Communications, Inc.*, Forfeiture Order, DA 04-1383, 2004 WL 1103709 (Enf. Bur. May 19, 2004) (holding a company responsible for its employee's failure to notify the FAA of a lighting malfunction on its antenna tower); and *Petracom of Joplin, L.L.C.*, Forfeiture Order, 19 FCC Rcd 6248 (Enf. Bur. 2004) (holding a licensee liable for its employee's failure to conduct weekly EAS tests and to maintain the "issues/programs" list).

¹³*American Paging, Inc. of Virginia*, Notice of Apparent Liability for Forfeiture, 12 FCC Rcd 10417, 10420 ¶ 11 (Enf. & Cons. Inf. Div., Wireless Tel. Bur. 1997) (quoting *Triad Broadcasting Company, Inc.*, Memorandum Opinion and Order, 96 FCC 2d 1235, 1244 (1984)).

conversation.¹⁴ Saga argues that the Bureau should reduce the forfeiture amount because of the company's "good faith."¹⁵ Nothing in the record supports a finding of good faith warranting reduction of the forfeiture amount.¹⁵

7. Finally, Saga contends that the Bureau should reduce the forfeiture because of Saga's history of overall compliance.¹⁶ We reject this claim because, in fact, the Enforcement Bureau has found various Saga affiliates in violation of the Commission's rules in numerous cases in the past four years.¹⁷ We therefore decline to reduce the forfeiture amount on these grounds.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended, and section 1.80 of the Commission's rules,¹⁸ Saga Communications of New England, LLC, shall FORFEIT to the United States the sum of \$4,000 for willfully violating section 73.1206 of the Commission's rules.

9. 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.¹⁹ 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 Group, 445 12th Street, S.W., Washington, D.C. 20554.²⁰

10. The Commission will not consider reducing or canceling a forfeiture in response to a

¹⁴See *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17115 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999).

¹⁵Saga cites *Infinity Broadcasting Corporation*, Memorandum Opinion and Order, 16 FCC Rcd 20156 (Enf. Bur. 2001) and *Long Nine, Inc.*, Forfeiture Order, 15 FCC Rcd 15747 (Enf. Bur. 2000) in support of its claim that the Bureau should reduce or eliminate the forfeiture. According to Saga, these cases establish that the Bureau has cancelled forfeitures for violations of 47 C.F.R. § 73.1206 "where circumstances indicated the licensee was operating under a misimpression or there was some confusion as to whether the broadcast was authorized." See Saga Response at 5. Both of these cases are distinguishable, however. In *Infinity*, the Bureau concluded that the licensee could have reasonably believed that the FCC staff approved of its procedures for broadcast telephone conversations. The facts supporting a good faith finding in *Long Nine* involved a mistaken belief that the station had previously given the required notice. Unlike in these cases, the facts here involve no such mistaken belief.

¹⁶Saga NAL Response at 7.

¹⁷See, e.g., *Saga Communications of Illinois, Inc.*, Notice of Violation, EB-02-CG-239 (Enf. Bur. Chicago Office, June 11, 2002) (violation of section 17.23 of the Commission's rules, 47 C.F.R. § 17.23 (antenna structure lighting)); *Saga Communications of New England, Inc.*, Notice of Violation, EB-00-BS-337 (Enf. Bur. Boston Office, July 24, 2000) (violation of section 17.4 of the Commission's rules, 47 C.F.R. § 17.4 (antenna structure registration)).

¹⁸47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

¹⁹47 U.S.C. § 504(a).

²⁰See 47 C.F.R. § 1.1914.

claim of inability to pay unless the respondent 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 respondent’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

IT IS FURTHER ORDERED THAT a copy of this Forfeiture Order shall be sent by Certified Mail - Return Receipt Requested to Lawrence D. Goldberg, Vice President, Saga Communications of New England, Inc, 15 Hampton Avenue, Northampton, Massachusetts 01060; its counsel, Gary S. Smithwick, Esquire, Smithwick & Belendiuk, P.C., 5028 Wisconsin Avenue, N.W., Suite 301, Washington, D.C. 20016; and Erwin G. Krasnow, Esquire, Garvey Schubert Barer, Fifth Floor, 1000 Potomac Street, N.W., Washington, D.C. 20007-3501.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau