

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

In the Matter of)	
)	
Victory & Power Ministries, Inc.,)	File No. EB-02-OR-356
Licensee of Station WPMC(AM))	NAL/Acct. No. 200332620005
Baton Rouge, Louisiana)	FRN: 0008-0778-77

FORFEITURE ORDER

Adopted: October 13, 2004

Released: October 15, 2004

By the Assistant Chief, Enforcement Bureau

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of twenty thousand dollars (\$20,000) to Victory & Power Ministries, Inc. (“VPM”), licensee of Station WPMC(AM), Baton Rouge, Louisiana for willful violations of the Emergency Alert System (“EAS”), the antenna fencing and the public file requirements of Sections 11.35(a), 73.49 and 73.3526(c) of the Commission’s Rules (“Rules”).¹

II. BACKGROUND

2. On November 13, 2002, the Commission’s New Orleans, Louisiana Field Office (“New Orleans Office”) inspected Station WPMC(AM)’s facilities, and observed that the EAS equipment was not operational or tested, that EAS tests were not logged, that the fence enclosing its antenna structure was not locked, and that the public file could not be located and thus was not available during normal business hours. As a result of the inspection, on February 14, 2003, the New Orleans Office released a *Notice of Apparent Liability for Forfeiture* (“*NAL*”).² The *NAL* found that VPM apparently willfully violated Sections 11.35(a), 73.49 and 73.3526(c) of the Rules, and proposed an aggregate \$25,000 forfeiture.

3. VPM responded to the *NAL* on March 17, 2003, and supplemented its response on September 20, 2004. In its response, VPM did not dispute the *NAL*’s findings. Rather, VPM sought cancellation of the proposed forfeiture based on its inadvertence, remedial efforts, inability to pay, and history of compliance.

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed 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*

¹47 C.F.R. §§ 11.35(a), 73.49 and 73.3526(c).

²*Victory & Power Ministries, Inc.*, NAL/Acct. No. 200332620005 (Enf. Bur., New Orleans Office, released February 14, 2003).

³47 U.S.C. § 503(b).

⁴47 C.F.R. § 1.80.

*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 As discussed below, we have considered VPM's response to the *NAL* in light of these statutory factors and have determined that a reduction of the proposed forfeiture is warranted.

5. VPM claimed, and provided supporting documentation (consisting of a police report and sworn declarations of its staff) to show, that a robbery occurred at the radio station on June 6, 2002. According to VPM, its staff, in cleaning up after the robbery, inadvertently discarded station documents, including the public file. Under Section 503(b)(1)(B) of the Act,⁷ a broadcast licensee that "willfully or repeatedly" fails to comply with any provision of the Act or any rule, regulation or order issued by the Commission under the Act" is subject to forfeiture liability. In this context, "willful" simply means the conscious and deliberate commission or omission of an act, *irrespective of any intent* to violate statutory or regulatory requirements.⁸ We find that VPM's staff's deliberate discarding of station documents, including the public file, was willful. We further find that VPM, as the broadcast licensee, is responsible and is not absolved from liability for the willful acts of its staff.⁹ Moreover, we do not find that the robbery and aftermath presented mitigating circumstances, given that it occurred in June of 2002 and that VPM made no effort to reconstruct its public file until more than five months *after* the incident and *after* the New Orleans Office inspected its facilities.¹⁰ Under the circumstances, we do not believe reduction or cancellation of the forfeiture is warranted in this regard.

6. VPM also claimed that it has corrected the noted violations. Specifically, VPM claimed that it corrected the EAS violation, by ensuring that its equipment is fully operational; it corrected the antenna fencing violation, by replacing the lock on the fence surrounding the antenna structure, instructing its employees of the importance of locking the fence, and regularly inspecting the fenced antenna site, and corrected the public file violation, by reconstructing its previously lost and thus unavailable public information file. The Commission expects a licensee to correct violations that are observed during inspection, and/or are the subject of an enforcement action.¹¹ A licensee's implementation of such corrective measures, however, does not mitigate its past violations and does not warrant reduction or cancellation of a forfeiture.¹² Thus, we find that no reduction or cancellation of the proposed forfeiture is warranted in this regard.

⁵12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

⁶47 U.S.C. § 503(b)(2)(D).

⁷47 U.S.C. § 503(b)(1)(B).

⁸See 47 U.S.C. § 312(f)(1) (emphasis added); see also *Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4387-88, ¶ 5 (1991).

⁹See *Eure Family Limited Partnership*, 17 FCC Rcd 21861, 21863-64 ¶¶ 6-7 (2002); *Sonderling Broadcasting Corp.*, 69 FCC 2d 289, 290-91 ¶ 6 (1977); *Wagenvoord Broadcasting Co.*, 35 FCC 2d 361, 361-62 ¶ 3 (1972).

¹⁰In this connection, we note that the public file serves important objectives, by fostering community involvement and by enabling a radio station's listeners to monitor the station's operations and public interest performance. See *Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, 13 FCC Rcd 15691, 15700 ¶ 18 (1998).

¹¹See *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21875 ¶ 26 (finding that all Commission licensees and regulatees are "expected to promptly take corrective action when violations are brought to their attention," and that such corrective action neither nullifies nor mitigates past violations); see also *Seawest Yacht Brokers*, 9 FCC Rcd at 6099, 6099 ¶ 7 (1994); *TCI Cablevision of Maryland, Inc.*, 7 FCC Rcd 6013, 6014 ¶ 8 (1992); *Sonderling Broadcasting Corp.*, 69 FCC 2d 289, 291 (1978); *South Central Communications Corp.*, 18 FCC Rcd 700, 702-03 ¶ 9 (Enf. Bur. 2003).

¹²*Id.*

7. Additionally, VPM claimed that “a \$25,000 fine to a gospel station with a limited market and a church the size of Victory and Power will cause extreme and tremendous hardship to [its] church and [its] operation.”¹³ As the *NAL* correctly noted, the Commission 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”).¹⁴ Because VPM did not submit any supporting financial documentation,¹⁵ we find that no reduction of cancellation of the proposed forfeiture is warranted in this regard.

8. Finally, VPM claimed, and a search of Commission records confirmed, that Station WPFC(AM) has a history of overall compliance with the Communications Act and the Commission’s rules and regulations. After considering VPM’s history of compliance,¹⁶ we find that a reduction of the proposed forfeiture to \$20,000 is appropriate.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁷ Victory & Power Ministries, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twenty thousand dollars (\$20,000.00) for its willful violations of Sections 11.35(a), 73.49 and 73.3526(c) of the Rules.

10. 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.¹⁸ 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. 20554.¹⁹

¹³NAL Response at 2.

¹⁴*NAL* at ¶ 12.

¹⁵*See Webnet Communications, Inc.*, 18 FCC Rcd 6870, 6878 ¶ 16 (2003) (finding that the Rules require that any request to reduce or remove a forfeiture based on an inability to pay claim include detailed and relevant financial documentation, that the carrier did not provide such documentation, and that therefore there was no basis to reduce the total forfeiture on such grounds); *see also Commonwealth License Subsidiary, LLC*, 18 FCC Rcd 20483, 20486 ¶ 10 (Enf. Bur. 2003); *Andre Dominique Hunter*, 14 FCC Rcd 3958, 3959-60 ¶ 6 (CIB 1999).

¹⁶*See, e.g., KGB, Inc.*, 13 FCC Rcd 16396, 6398 ¶ 8 (1998) (reducing a proposed forfeiture from \$11,500 to \$9,200 for airing indecent material because of the broadcast licensee’s history of overall compliance prior to these broadcasts); *Max Media of Montana, L.L.C.*, 18 FCC Rcd 21375, 21379 ¶ 14 (Enf. Bur. 2003) (reducing a proposed forfeiture from \$11,000 to \$8,800 for antenna structure lighting and registration violations because of the licensee’s history of overall compliance).

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

¹⁸ 47 U.S.C. § 504(a).

¹⁹ *See* 47 C.F.R. § 1.1914.

11. **IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Victory & Power Ministries, Inc., 6940 Harry Drive, Baton Rouge, Louisiana 70806.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau