

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

In the Matter of)	File No.: EB-02-AT-318
)	NAL/Acct. No. 200232480027
Coffee County Broadcasting, Inc.)	FRN 0003-7625-64
Manchester, Tennessee)	

MEMORANDUM OPINION AND ORDER

Adopted: February 20, 2004

Released: February 24, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“*Order*”), we deny the petition for reconsideration filed by Coffee County Broadcasting, Inc. (“Coffee County”), licensee of radio station WMSR(AM), Manchester, Tennessee. Coffee County seeks reconsideration of the *Forfeiture Order*¹ in which the Chief, Enforcement Bureau (“Bureau”), found it liable for a monetary forfeiture in the amount of \$7,000 for willful violation of Section 73.1125(a) of the Commission’s Rules (“Rules”).² The noted violation involves Coffee County’s willful failure to maintain a presence at its main studio during normal business hours.

II. BACKGROUND

2. On July 11, 2002, an agent from the Commission’s Atlanta, Georgia Office (“Atlanta Office”) attempted to inspect station WMSR(AM)’s main studio; however, the agent was unable to gain access to the studio. On July 15, 2002, the agent telephoned station WMSR(AM) but reached an answering service which confirmed that calls were referred to it when the studio was unmanned. On July 18, 2002, the agent contacted WMSR(AM)’s general manager, who confirmed that the studio had been unstaffed. The general manager was unaware of the studio staffing requirements during normal business hours.

3. On September 30, 2002, the District Director of the Atlanta Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”)³ in the amount of \$7,000 for willful violation of Section 73.1125(a) of the Rules. Coffee County did not file a response to the NAL. The Bureau’s *Forfeiture Order*, released January 31, 2003, affirmed the forfeiture proposed by the NAL. On February 26, 2003, Coffee County filed a petition for reconsideration of the *Forfeiture Order*.

III. DISCUSSION

4. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934 as amended (“Act”),⁴ Section 1.80 of the Rules,⁵ and *The Commission’s*

¹ 18 FCC Rcd 1033 (Enf. Bur. 2003).

² 47 C.F.R. § 73.1125(a).

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 20023480027 (Enf. Bur., Atlanta Office, released September 30, 2002).

⁴ 47 U.S.C. § 503(b).

*Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines.*⁶ In examining Coffee County's petition, Section 503(b) of the Act requires that the Commission 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 any other such matters as justice may require.⁷

5. Coffee County does not challenge the Bureau's finding that it violated Section 73.1125(a) of the Rules. Nevertheless, Coffee County seeks cancellation of the forfeiture. In support of its request for cancellation, Coffee County states that it now has full-time main studio staffing during normal business hours and that it is pursuing participation in the Tennessee Association of Broadcasters Alternative Inspection Program. Although Coffee County's corrective actions are commendable, they do not mitigate its violation. 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."⁸ Further, Coffee County asserts that payment of the forfeiture will be a hardship that will handicap its ability to remain an active part of the community. However, we have reviewed the financial information provided by Coffee County and we find that this information does not provide a basis for cancellation or reduction of the forfeiture. Indeed, the forfeiture is a very small percentage of Coffee County's gross revenues.⁹ Finally, Coffee County states that it has never had any major FCC violations, which we interpret to be a claim of history of overall compliance with the Commission's Rules. However, we note that the Atlanta Office issued a Notice of Violation to Coffee County on April 9, 1999, therefore, Coffee County's claim of history of overall compliance should not result in a reduction of the forfeiture.¹⁰

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act¹¹ and Section 1.106 of the Rules,¹² Coffee County's petition for reconsideration of the February 26, 2003, *Forfeiture Order* **IS DENIED**.

⁵ 47 C.F.R. § 1.80.

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

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ See also *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002).

⁹ See *Alpha Ambulance, Inc.*, FCC 04-19, 2, n.15 (February 5, 2004), citing *PJB Communications*, 7 FCC Rcd at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, 16 FCC Rcd at 10025 (forfeiture not deemed excessive where it represented approximately 7.9 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). In this case, the forfeiture represents a smaller percentage than those issued in the *Local Long Distance, Inc.*, and *Hoosier Broadcasting Corp.*, cases, and only a nominally higher percentage compared to the forfeiture issued in *PJB Communications of Virginia, Inc.*

¹⁰ See *Clarke Broadcasting Corporation*, 18 FCC Rcd 18732, 18734 (Enf. Bur. 2003).

¹¹ 47 U.S.C. § 405.

¹² 47 C.F.R. § 1.106.

7. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules¹³ 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 "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 200232480027 and FRN 0003-7625-64. 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

8. **IT IS FURTHER ORDERED THAT** this *Order* shall be sent by regular mail and by certified mail, return receipt requested, to Coffee County Broadcasting, Inc., 1030 Oakdale St., Manchester, Tennessee 37355.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹³ 47 C.F.R. § 1.80.

¹⁴ 47 U.S.C. § 504(a).

¹⁵ See 47 C.F.R. § 1.1914.