

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

In the Matter of)	
)	
Tralyn Broadcasting, Inc.)	File No.: EB-02-OR-242
)	NAL/Acct. No. 200332620001
Licensee of Station WIGG(AM) in Wiggins, Mississippi)	FRN 0005-0066-71
)	
Muscle Shoals, Alabama)	

MEMORANDUM OPINION AND ORDER

Adopted: March 15, 2004

Released: March 17, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* ("Order") we grant in part and deny in part the Petition for Reconsideration filed by Tralyn Broadcasting, Inc. ("Tralyn"), licensee of Station WIGG(AM), Wiggins, Mississippi. Tralyn 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 and repeated violation of Sections 11.61(a)(2)(i)(A) and 73.3526(a)(2) of the Commission's Rules ("Rules").² The noted violations involve Tralyn's failure to conduct weekly tests of the Emergency Alert System and failure to maintain all of the required items in the station's public inspection file. We lower the forfeiture here to \$5,600 based on Tralyn's history of overall compliance.

2. On October 1, 2002, the District Director of the Commission's New Orleans, Louisiana Field Office ("New Orleans Office") issued a *Notice of Apparent Liability for Forfeiture* ("NAL") in the amount of \$7,000 to Tralyn.³ Tralyn did not respond to the NAL. On January 30, 2003, the Bureau issued the *Forfeiture Order*, which imposed a monetary forfeiture in the amount of \$7,000. Tralyn filed a request for reconsideration of the *Forfeiture Order* on March 3, 2003.

II. BACKGROUND

3. On August 13, 2002, an agent from the New Orleans Office inspected WIGG in Wiggins, Mississippi. During the inspection, the agent found that there were no log entries indicating that station personnel had conducted the required weekly EAS tests and a station employee admitted that no weekly EAS tests had been conducted. In addition, the agent's review of the station's public inspection file indicated that several required documents were missing from the file, including the station authorization,

¹ *AAT Communications Corporation*, 18 FCC Rcd 1490 (Enf. Bur. 2002).

² 47 C.F.R. §§ 11.61(a)(2)(i)(A) and 73.3526(a)(2).

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332620001 (Enf. Bur., New Orleans Office, released October 1, 2002).

The Public and Broadcasting manual, letters from the public and quarterly issues/programs lists for 2001 and 2002.

4. On October 1, 2002, the New Orleans Office issued the *NAL* to Tralyn in the amount of \$7,000. Tralyn did not respond to the *NAL*. On January 30, 2003, the Bureau issued the *Forfeiture Order*, imposing a monetary forfeiture of \$7,000 for willful and repeated violation of Sections 11.61(a)(2)(i)(A) and 73.3526(a)(2) of the Rules. In its request for reconsideration, Tralyn admits the violations but argues that they were caused by a “rogue” former employee. Tralyn also argues it has a history of overall compliance; that its violations were immediately corrected and that payment of the proposed forfeiture would be a financial hardship. To support its financial hardship argument, Tralyn provides copies of its 1999, 2000 and 2001 federal income tax returns.

III. DISCUSSION

5. Section 11.61(a)(2)(i)(A) of the Rules requires that AM, FM and TV stations conduct tests of the EAS header and end of message codes at least once a week at random days and times. Tralyn admits that it did not conduct these tests. We find that Tralyn willfully⁴ and repeatedly⁵ violated Section 11.61(a)(2)(i)(A).

6. Section 73.35226(a) of the Rules requires that every permittee or licensee of an AM, FM, TV or Class A TV station in the commercial broadcast services maintain a public inspection file containing specified materials. Tralyn admits that its public inspection file lacked many of the required documents. We find that Tralyn willfully and repeatedly violated Section 73.3526(a).

7. Tralyn’s violations cannot be excused or mitigated by blaming them on a “rogue” employee. “[T]he Commission has long held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors and has consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations.”⁶

8. No mitigation is warranted on the basis of Tralyn’s correction of the violations. 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.”⁷

⁴ Section 312(f)(1) of the Communications Act of 1934, as amended, (“Act”), 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, 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).

⁵ As provided by 47 U.S.C. § 312(f)(2), a continuous violation is “repeated” if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

⁶ *Eure Family Limited Partnership*, 17 FCC Rcd 21861, 21863-64 (2002) (internal quotation marks omitted) and cases cited therein.

⁷ See also *Callais Cablevision, Inc.*, 17 FCC Rcd 22626, 22629 (2002); *Radio Station KGVV, Inc.*, 42 FCC 2d 258, 259 (1973); and *Executive Broadcasting Corp.*, 3 FCC 2d 699, 700 (1966).

9. We do, however, find that Tralyn has a history of overall compliance and that, accordingly, the forfeiture amount should be reduced to \$5,600.

10. In support of its financial hardship claim, Tralyn submits copies of its 1999, 2000 and 2001 federal income tax returns. The Commission has determined that, in general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.⁸ After reviewing the financial data submitted, we find that the monetary forfeiture amount should not be further reduced.⁹

11. We have examined Tralyn's Petition for Reconsideration pursuant to the statutory factors above, 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 Tralyn willfully and repeatedly violated Sections 11.61(a)(2)(i)(A) and 73.3526(a)(2) of the Rules and find that, although cancellation of the monetary forfeiture is not warranted, reduction of the forfeiture amount to \$5,600 is appropriate.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act¹¹ and Section 1.106 of the Rules,¹² Tralyn's petition for reconsideration of the March 3, 2003, *Forfeiture Order IS GRANTED* to the extent that the monetary forfeiture amount is **REDUCED** to \$5,600 and **IS DENIED** in all other respects.

13. 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.¹³ 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. 200332620001, and FRN 0005-0066-71. 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. 20554.¹⁴

⁸ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992).

⁹ *Id.* at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 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); *Afton Communications Corp.*, 7 FCC Rcd 6741 (Com. Car. Bur. 1992) (forfeiture not deemed excessive where it represented approximately 3.9 percent of the violator's gross revenues).

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

¹¹ 47 U.S.C. § 405.

¹² 47 C.F.R. § 1.106.

¹³ 47 U.S.C. § 504(a).

¹⁴ See 47 C.F.R. § 1.1914.

14. **IT IS FURTHER ORDERED THAT** a copy of this *Order* shall be sent by first class mail and certified mail, return receipt requested, to Tralyn Broadcasting, Inc., 522 D Mitchell Self Memorial Drive, Muscle Shoals, Alabama 35662, and to its counsel Frank R Jazzo, Esq., Fletcher, Heald & Hildreth P.L.C., Eleventh Floor, 1300 17th Street, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau