

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

In the Matter of)	File No.: EB-02-SD-144
)	NAL/Acct. No. 200232940008
Aracelis Ortiz, Executrix)	FRN 0003-7552-87
For the Estate of Carlos Ortiz)	
Harlingen, Texas)	

MEMORANDUM OPINION AND ORDER

Adopted: January 11, 2005

Released: January 13, 2005

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“*Order*”), we deny the petition for reconsideration filed by Aracelis Ortiz, Executrix for the Estate of Carlos Ortiz (“Aracelis Ortiz”) licensee of Class A Television Broadcast Station KCOS-LP, Phoenix, Arizona. Aracelis Ortiz seeks reconsideration of the *Forfeiture Order*¹ in which the Chief, Enforcement Bureau (“Bureau”), found her liable for a monetary forfeiture in the amount of \$12,000 for willful violation of Sections 73.1125(c) and 11.35(a) of the Commission’s Rules (“Rules”).² The noted violations involve Aracelis Ortiz’s failure to ensure that required Emergency Alert System (“EAS”) equipment was operational at Station KCOS-LP and Mrs. Ortiz’s failure to have a main studio at a location within KCOS-LP’s predicted Grade B contour on June 25, 2002.³

II. BACKGROUND

2. After conducting an investigation and determining that Aracelis Ortiz did not have EAS equipment installed at Station KCOS-LP and that Station KCOS-LP did not have a main studio located within its predicted Grade B contour, on September 30, 2002, the Commission’s San Diego, California Office (“San Diego Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Aracelis Ortiz in the amount of fifteen thousand dollars (\$15,000) for the apparent violations.⁴ On November 18, 2002, Aracelis Ortiz filed a response to the NAL. On February 23, 2004, the Chief of the Commission’s Enforcement Bureau (“the Bureau”) issued a *Forfeiture Order* upholding the NAL but reducing the forfeiture amount from \$15,000 to \$12,000 because of Mrs. Ortiz’s good faith efforts to comply with the main studio and EAS rules. On March 24, 2004, Aracelis Ortiz, by her attorney, filed a petition for reconsideration (“petition”) of the *Forfeiture Order*. In the petition, Mrs. Ortiz does not contest the violations; however, she seeks reconsideration of the *Forfeiture Order* on the basis of financial hardship.

¹ 19 FCC Rcd 2632 (Enf. Bur. 2004).

² 47 C.F.R. §§ 73.1125(c) and 11.35(a).

³ Mrs. Ortiz has indicated that she has remedied both the EAS violation and the main studio violation.

⁴ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232940008 (Enf. Bur., San Diego, September 30, 2002).

III. DISCUSSION

3. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934 as amended (“Act”),⁵ Section 1.80 of the Rules,⁶ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁷ In examining Mrs. Ortiz’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 such other matters as justice may require.⁸

4. In support of her request for reconsideration, Mrs. Ortiz includes an affidavit⁹ in which she states that Station KCOS-LP is a continuation of a non-profit television ministry founded by her late husband, Pastor Carlos Ortiz. Mrs. Ortiz also asserts that, at the time of the events leading to the *Forfeiture Order*, KCOS-LP was broadcasting non-commercial religious programming from La Familia Television Network, Inc. (“La Familia”). Mrs. Ortiz further states that she neither had a contractual relationship with nor received any form of compensation from La Familia for broadcasting its programming over the facilities of KCOS-LP. Although Mrs. Ortiz claims that payment of the forfeiture amount would jeopardize the ability of Station KCOS to operate in the public interest, she has not submitted her personal financial statements and/or tax returns because she believes the documents would not provide useful information concerning KCOS’s financial condition as they do not reflect any income from the station’s operation.

5. The Commission has determined that, in general, a licensee’s gross revenues are the best indicator of its ability to pay a forfeiture.¹⁰ As it appears that Mrs. Ortiz, the individual, is the licensee of Station KCOS, and not a separately incorporated entity, it is Mrs. Ortiz’s gross revenues that are relevant to our inquiry. The Commission has also concluded that it is appropriate to take into account “*income derived from other affiliated operations*, as well as the financial status of the station(s) in question.”¹¹ As the Common Carrier Bureau stated in *Hinton Telephone Company of Hinton, Oklahoma*:

reviewing the data for consolidated operations rather than financial data limited to just [one station] accurately portrays whether a licensee can pay a proposed forfeiture. Our determination of a licensee’s ability to pay should reflect whether the licensee in general is financially capable of paying a forfeiture, not whether financial data from a limited portion of its operations can sustain a forfeiture.

7 FCC Rcd 6643, 6644 (CCB 1992), *review denied*, 8 FCC Rcd 5176 (1993). Thus, it is the Commission’s general policy to consider the financial condition of a licensee’s consolidated operations, not just the financial condition of an individual station or a limited portion of its operations. As it is a

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

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

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ We note that, although counsel for Aracelis Ortiz stated that the original, signed affidavit would be submitted to the Bureau when he received it, the Bureau has not received an affidavit with an original signature.

¹⁰ PJB Communications of Virginia, Inc., 7 FCC Rcd 2088, 2089 (1992).

¹¹ *Emery Telephone*, 13 FCC Rcd 23854, 23859-60 (1998) (emphasis added), *recon. denied*, 15 FCC Rcd 7181 (1999).

matter of record that there are “a number of low power television stations that were licensed to [the late Pastor Ortiz] and his wife, to their church, and to Ortiz Broadcasting Corp.”¹² and consistent with Commission policy, the financial condition of all of the affiliated entities is relevant to the issue of whether Aracelis Ortiz, licensee of Station KCOS, can pay the forfeiture amount. Because Mrs. Ortiz has not provided any information concerning her revenues or the revenues of the several entities affiliated with Aracelis Ortiz, the licensee, we have no justification for reducing the forfeiture based upon her claim of financial hardship. Further, even though Aracelis Ortiz states that imposition of this forfeiture would jeopardize the ability of Station KCOS to operate in the public interest, we have held that, consistent with our holding in *PJB Communications*, we will not find that a forfeiture will threaten a licensee's ability to serve the public unless a comparison of the forfeiture amount with the licensee's gross receipts shows that such a threat exists.¹³ In this case, we can not make such a comparison because Aracelis Ortiz has not provided us with her financial documentation.

V. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act¹⁴ and Section 1.106 of the Rules,¹⁵ Aracelis Ortiz's petition for reconsideration of the February 23, 2004 *Forfeiture Order* **IS DENIED**.

7. 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.¹⁶ 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. 20554.¹⁷

¹² Response to *NAL* at page 2.

¹³ *KASA Radio Hogar*, 17 FCC Rcd 6256, 6259 (2002); *Emery Telephone* at 7185.

¹⁴ 47 U.S.C. § 405.

¹⁵ 47 C.F.R. § 1.106.

¹⁶ 47 U.S.C. § 504(a).

¹⁷ See 47 C.F.R. § 1.1914.

8. **IT IS FURTHER ORDERED THAT** this *Order* shall be sent by regular mail and by certified mail, return receipt requested, to J. Geoffrey Bentley, Esq., P.O. Box 71027, Herndon, Virginia, 20171.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau