

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

In the Matter of	)	
	)	File No. EB-04-BF-018
M.B. Communications, Inc.	)	NAL/Acct. No. 200432280003
WYLF	)	FRN: 0000012005
Penn Yan, New York	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted:** August 8, 2006

**Released:** August 10, 2006

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order* (“*Order*”), we deny the petition for reconsideration filed by M.B. Communications, Inc. (“M.B. Communications”),<sup>1</sup> licensee of AM radio station WYLF, Penn Yan, New York. M.B. Communications seeks reconsideration of the Enforcement Bureau’s (“Bureau”) *Forfeiture Order* imposing a forfeiture in the amount of eleven thousand dollars (\$11,000) for violations of Sections 73.1560(a)(1), 73.1745(a), and 73.49 of the Commission’s rules (“Rules”).<sup>2</sup>

**II. BACKGROUND**

2. On August 25, 2004, the Commission’s Buffalo Office issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to M.B. Communications for a forfeiture in the amount of eleven thousand dollars (\$11,000) for willful and repeated violation of Sections 73.1560(a)(1), 73.1745(a), and 73.49 of the Rules. The violations concerned the operation of WYLF with power in excess of the station’s authorization during daytime, post sunset, and nighttime hours and failure to enclose the station’s tower within an effective locked fence or other enclosure. M.B. Communications filed a response to the *NAL* on August 31, 2004. The Bureau released a *Forfeiture Order* imposing a forfeiture in the amount of \$11,000 for the noted violations on June 3, 2005.<sup>3</sup> M.B. Communications filed the instant petition for reconsideration on June 22, 2005. M.B. Communications does not dispute the findings in the *Forfeiture Order*, but seeks a remission or reduction of the forfeiture based on its inability to pay.

<sup>1</sup> M.B. Communications, Inc., Petition for Reconsideration of Forfeiture Order Confidential Treatment Requested, filed June 22, 2005.

<sup>2</sup> *M.B. Communications, Inc.*, Forfeiture Order, 20 FCC Rcd 9536 (2005); 47 C.F.R. §§ 73.49, 73.1560(a)(1), and 73.1745(a).

<sup>3</sup> In its response to the *NAL*, M.B. Communications largely claimed that its violations were not willful. The Bureau found, *inter alia*, that because the violations were repeated, it was not necessary to make a finding that the violations also were willful. See *Forfeiture Order* at paras. 7, 9. The Bureau also rejected M.B. Communications’ claim that the agent erroneously concluded that the lock around WYLF’s antenna structure was ineffective. See *Forfeiture Order* at para. 8. The Bureau further found that M.B. Communications’ remedial efforts were expected and therefore did not nullify any prior forfeitures or violations. See *Forfeiture Order* at para. 10. M.B. Communications did not claim an inability to pay in response to the *NAL*.

In support of this request, M.B. Communications submits its tax returns for the past three years.

### 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”),<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.<sup>6</sup> In examining M.B. Communications’ petition for reconsideration, Section 503(b) 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 any such other matters as justice may require.<sup>7</sup> The Commission has determined that, in general, an entity’s gross revenues are the best indicator of its ability to pay a forfeiture.<sup>8</sup> After reviewing M.B. Communications’ claim and supporting documentation, we find that a reduction of the forfeiture based on inability to pay is not warranted.

### IV. ORDERING CLAUSES

4. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act<sup>9</sup> and Section 1.106 of the Rules,<sup>10</sup> the petition for reconsideration filed by M.B. Communications, Inc. of the Enforcement Bureau’s *Forfeiture Order* for the NAL/Acct. No. referenced herein is **DENIED**.

5. **IT IS ALSO ORDERED THAT**, pursuant to Section 503(b) of the Communications Act of 1934, as amended, (“Act”) and Section 1.80(f)(4) of the Rules,<sup>11</sup> M.B. Communications, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eleven thousand dollars (\$11,000) for willfully and repeatedly violating Sections 73.49, 73.1560(a)(1), and 73.1745(a) of the Rules.<sup>12</sup>

6. 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.<sup>13</sup> 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 Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing

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<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</sup> 12 FCC Rcd. 17087 (1997), *recon. denied*, 15 FCC Rcd. 303 (1999).

<sup>7</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>8</sup> *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992).

<sup>9</sup> 47 U.S.C. § 405.

<sup>10</sup> 47 C.F.R. § 1.106.

<sup>11</sup> 47 C.F.R. §§ 0.111, 0.311, and 1.80(f)(4).

<sup>12</sup> M.B. Communications made a “good faith” payment of \$2,000 on August 31, 2004, and thus the total amount due will be \$9,000.

<sup>13</sup> 47 U.S.C. § 504(a).

Director – Financial Operations, 445 12<sup>th</sup> Street, SW, Room 1A625, Washington, DC 20554.<sup>14</sup>

7. **IT IS FURTHER ORDERED** that copies of this *Order* shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to M.B. Communications, Inc. and its counsel at their addresses of record.

**FEDERAL COMMUNICATIONS COMMISSION**

Kris Anne Monteith  
Chief, Enforcement Bureau

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<sup>14</sup> See 47 C.F.R. § 1.1914.