

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

In the Matter of )
Alpine Broadcasting Limited Partnership ) File No. EB-04-ST-117
Former Licensee of AM Station KWYS ) NAL/Acct. No. 200532980001
West Yellowstone, Montana ) FRN: 0005952668
Facility ID 24434 )

FORFEITURE ORDER

Adopted: March 24, 2006

Released: March 28, 2006

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000) to Alpine Broadcasting Limited Partnership ("Alpine"), former licensee of AM Station KWYS in West Yellowstone, Montana, ACS Wireless ("ACS") for willful and repeated violation of Section 73.1125(a) of the Commission's Rules ("Rules"), by failing to maintain a meaningful managerial and staff presence at the KWYS main studio. On January 14, 2005, the Enforcement Bureau's Seattle Office issued a Notice of Apparent Liability for Forfeiture ("NAL") in the amount of \$7,000 to Alpine. In this Order, we consider Alpine's arguments that the NAL is unenforceable against Alpine, and that the agent's assessments of the station's main studio were not consistent with the facts at the time of the inspection.

II. BACKGROUND

2. On May 17, 2004, an agent from the Commission's Seattle Office attempted to conduct a routine inspection of the KWYS main studio at 303 N. Canyon Street, West Yellowstone, Montana, during regular business hours. The agent found the main studio locked with no station personnel present, only a sign referring persons seeking the public file to see a realty agency, located across the hall, for instructions on how to gain access. A representative from the realty company told the agent that no one associated with KWYS had been present at the studio for the last few months and that he had an agreement with the station to let people see the public file if requested. The agent contacted Alpine's office in Ketchum, Idaho. Alpine's General Partner told the agent that KWYS was run remotely from that office and that an advertising agent in West Yellowstone went to the studio infrequently to work on ads. He also advised the agent that he or KWYS's contract engineer could arrive at the station in three to four hours to complete the inspection, but no sooner.

1 On June 21, 2004, the Commission accepted Alpine's application to assign, among other licenses, the license of KWYS(AM), to Chaparral Broadcasting, Inc. See File No. BALH-20040617AAW. The application was granted on July 30, 2004. According to Commission records, the transaction was consummated on August 13, 2004. At the time of the violation discussed herein, Alpine was the licensee of KWYS.

2 47 C.F.R. § 73.1125(a).

3 Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200532980001 (Enf. Bur., Western Region, Seattle Office, released January 14, 2005).

3. On January 14, 2005, the Seattle Office issued the *NAL* to Alpine, finding that Alpine apparently willfully and repeatedly failed to maintain a meaningful managerial and staff presence at the KWYS main studio. Alpine filed a response to the *NAL* on February 14, 2005 (“*Response*”). In the *Response*, Alpine states that the *NAL* is unenforceable against Alpine, and that the agent’s assessments of the station’s main studio were not consistent with the facts at the time of the inspection.

### III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the 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 Alpine’s response, 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 other such matters as justice may require.<sup>7</sup>

5. Section 73.1125(a) of the Rules requires the licensee of a broadcast station to maintain a main studio at one of the following locations: (1) within the station’s community of license; (2) at any location within the principal community contour of any AM, FM or TV broadcast station licensed to the station’s community of license; or (3) within twenty-five miles from the reference coordinates of the center of its community of license as described in Section 73.208(a)(1).<sup>8</sup> In addition, the station’s main studio must serve the needs and interests of the residents of the station’s community of license. To fulfill this function, a station must, among other things, maintain a meaningful managerial and staff presence at its main studio.<sup>9</sup> The Commission has defined a minimally acceptable “meaningful presence” as full-time managerial and full-time staff personnel.<sup>10</sup> In addition, there must be “management and staff presence” on a full-time basis during normal business hours to be considered “meaningful.”<sup>11</sup> Although management personnel need not be “chained to their desks” during normal business hours, they must “report to work at the main studio on a daily basis, spend a substantial amount of time there and . . . use the studio as a home base.”<sup>12</sup>

6. We first address the argument that the *NAL* is unenforceable against Alpine. Scott D. Parker, who identifies himself on the *Response* as the “Former General Partner of Alpine Broadcasting Limited Partnership” states that, as noted in the *NAL*, KWYS was sold to Chaparral Broadcasting on August 13, 2004, that Alpine has completed “‘winding down’ its business affairs . . . [and that] Alpine is nothing more than a shell entity without any assets or cash.” Parker and Alpine provide no documentation to support this statement. In the *NAL*, the Seattle Office instructed Alpine, if it sought cancellation or reduction of the forfeiture, to supply:

(1) federal tax returns for the most recent three-year period; (2) financial statements prepared

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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> 47 C.F.R. § 73.1125(a).

<sup>9</sup> See *Main Studio and Program Origination Rules*, 2 FCC Rcd 3215, 3217-18 (1987), clarified 3 FCC Rcd 5024, 5026 (1988).

<sup>10</sup> *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 (1991), clarified 7 FCC Rcd 6800 (1992).

<sup>11</sup> *Id.*

<sup>12</sup> 7 FCC Rcd at 6802.

according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.<sup>13</sup>

Absent sufficient evidence that supports Parker’s and Alpine’s assertions, we have no basis to find that this *NAL* is unenforceable against Alpine.<sup>14</sup>

7. Alpine also asserts that the Seattle agent’s “overall assessments and certain statements are not consistent with the facts.” Specifically, Alpine argues that Parker never advised the agent that the station was run remotely, but that the transmitter could be controlled remotely. Further, Alpine states that Parker informed the agent, at the time of the inspection, that the station had two employees and an engineer on contract who “must be out of the office.” Alpine also states that the representative of the realty company who held the key to the KWYS main studio and unlocked the main studio for the Seattle agent “had a long working relationship with the radio station” and that he “had previously agreed to serve as alternate chief operator in the event station personnel were out.” Alpine acknowledges, however, that KWYS was not on the air for nearly four months between January 2004 and May 2004, and that during that period of time it was true, as the realty company representative stated to the Seattle agent, that “no one associated with KWYS had been present at the studio for the last few months.”

8. We acknowledge that there may have been some confusion concerning the remote operation of the station, however, this confusion does not mitigate the Seattle Office’s finding that Alpine failed to staff the KWYS main studio to ensure compliance with Section 73.1125(a) of the Rules. As stated above, and in the *NAL*, a station must maintain management and staff presence on a full-time basis during normal business hours to be considered “meaningful.”<sup>15</sup> The staff must “report to work at the main studio on a daily basis, spend a substantial amount of time there and ... use the studio as a home base.”<sup>16</sup> At the time of the inspection, during regular business hours, the agent remained at the station for over two hours and found no staff presence, meaningful or otherwise, at the main studio. While the realty company representative holding the key to the studio may have been associated with KWYS, Alpine does not assert that he was a member of its daily staff. Moreover, Alpine provides no evidence to support its assertion that the realty company representative was designated as an alternate Chief Operator.<sup>17</sup> Therefore, we find the evidence supports the Seattle Office’s finding that Alpine violated Section 73.1125(a) by failing to maintain a meaningful managerial and staff presence at the KWYS main studio. This support is buttressed by Alpine’s acknowledgement that it failed to maintain a meaningful staff presence at the KWYS main studio between January 2004 and May 2004 while KWYS was off the air. A review of the Commission’s records reveals that Alpine received no special temporary authorization to cease broadcasting for that period of time, as required by Sections 73.1635 and 73.1740 of the Rules,<sup>18</sup> and no waiver of the Commission’s main studio staffing requirements.

9. We have examined Alpine’s response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Alpine Broadcasting Limited Partnership willfully and repeatedly violated Section 73.1125 of the Rules. Considering the entire record and the factors listed above, we find that neither reduction nor cancellation

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<sup>13</sup> *NAL* at ¶ 11.

<sup>14</sup> See *Webnet Communications, Inc.*, 18 FCC Rcd 6870, 6878 (2003).

<sup>15</sup> *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 (1991), clarified 7 FCC Rcd 6800 (1992).

<sup>16</sup> 7 FCC Rcd at 6802.

<sup>17</sup> See 47 C.F.R. § 73.1870.

<sup>18</sup> 47 C.F.R. § 73.1635 (Special Temporary Authorization); 47 C.F.R. § 73.1740 (Minimum Operating Schedule).

of the proposed \$7,000 forfeiture is warranted.

#### IV. ORDERING CLAUSES

10. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules, Alpine Broadcasting Limited Partnership **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$7,000 for willfully and repeatedly violating Section 73.1125(a) of the Rules.<sup>19</sup>

11. 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>20</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 Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.<sup>21</sup>

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Alpine Broadcasting Limited Partnership, P.O. Box 2158, Ketchum, ID, 83340-2158, and Scott D. Parker, 221 Northwood Way, Suite 300, Ketchum, ID, 83340.

#### FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch  
Regional Director, Western Region  
Enforcement Bureau

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<sup>19</sup> 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.1125(a).

<sup>20</sup> 47 U.S.C. § 504(a).

<sup>21</sup> See 47 C.F.R. § 1.1914.