

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

In the Matter of)	File No.: EB-02-SD-288
)	
Playa del Sol Broadcasters)	NAL/Acct. No. 200332940004
Licensee, KRCK-FM)	
Mecca, California)	FRN 000-425-6426

MEMORANDUM OPINION AND ORDER

Adopted: January 25, 2007

Released: January 29, 2007

By the Assistant Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“*Order*”), we deny the petition for reconsideration (“petition”) filed by Playa del Sol Broadcasters (“Playa del Sol”). Playa del Sol seeks reconsideration of the *Forfeiture Order*¹ in which the Chief, Enforcement Bureau, found it liable for a monetary forfeiture in the amount of \$12,000 for violation of Sections 11.35, 11.61, and 73.1125 of the Commission’s Rules (“Rules”).² The noted violations involve Playa del Sol’s failure to ensure that required Emergency Alert System (“EAS”) equipment was operational, failure to conduct required tests of Station KRCK-FM’s EAS equipment and failure to maintain a main studio. In its petition, Playa del Sol does not dispute the violations but instead seeks rescission or reduction of the forfeiture, claiming an inability to pay.

II. DISCUSSION

2. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),³ Section 1.80 of the Rules,⁴ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁵ In examining Playa del Sol’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.⁶

3. In its petition, Playa del Sol contends that its involvement in on-going litigation adversely

¹ *Playa del Sol Broadcasters*, Forfeiture Order, 19 FCC Rcd 16130 (Enf. Bur. 2004).

² 47 C.F.R. §§ 11.35, 11.61, 73.1125.

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

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

⁶ 47 U.S.C. § 503(b)(2)(D).

impacts its ability to pay the forfeiture in this case.⁷ When considering an inability to pay claim, the Commission has determined that, in general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.⁸ If gross revenues are sufficiently great, the mere fact that a business is operating at a loss does not itself mean that it cannot afford to pay a forfeiture.⁹ 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."¹⁰ Because Playa del Sol is operated as a sole proprietorship, it has provided the financial documentation of its sole proprietor, Edward R. Stolz II.¹¹ We find that the documentation provided reflects that the amount of Mr. Stolz's gross income, when compared to the forfeiture amount, effectively negates the financial hardship claim. The instant forfeiture assessment and the percentage of gross income it represents falls within the range that has been found acceptable.¹² Accordingly, we reject Playa del Sol's claim of inability to pay.

III. ORDERING CLAUSES

4. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act and Section 1.106 of the Rules, Playa del Sol's petition for reconsideration **IS DENIED**.

5. **IT IS FURTHER ORDERED** that, pursuant to Section 503(b) of the Act,¹³ and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,¹⁴ Playa del Sol **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$12,000 for willfully and repeatedly violating Sections 11.25, 11.61, and 73.1125 of the Rules.

6. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules¹⁵ 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 may be made by credit card to the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the 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.

⁷ Petition for Reconsideration at 2; Supplement to Petition for Reconsideration at 2.

⁸ *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

⁹ *Id.*

¹⁰ *KASA Radio Hogar, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 6256, 6258 (2002) (quoting *Emery Telephone*, Memorandum Opinion and Order, 13 FCC Rcd 23854, 23859-60 (1998), *recon. denied*, 15 FCC Rcd 7181 (1999)).

¹¹ See *William Saunders*, Memorandum Opinion and Order, 21 FCC Rcd 1028 (Enf. Bur. 2006) (financial documentation, including personal tax returns, considered to determine inability to pay when antenna structure was operated as a sole proprietorship); *Maria L. Salazar*, Memorandum Opinion and Order, 19 FCC Rcd 5050 (2004) (federal individual tax returns of licensee of radio station considered to determine licensee's ability to pay forfeiture).

¹² See *Local Long Distance, Inc.*, Order of Reconsideration, 16 FCC Rcd 10016, 10025 (2001) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, Memorandum Opinion and Order, 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); *Alpha Ambulance, Inc.*, Order, 19 FCC Rcd 2547, n.15 (February 5, 2004), citing *PJB Communications, supra* at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues).

¹³ 47 U.S.C. § 503(b).

¹⁴ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁵ 47 C.F.R. § 1.80.

¹⁶ 47 U.S.C. § 504(a).

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, 445 12th St, SW, Room 1A625, Washington, DC 20554.¹⁷

7. **IT IS FURTHER ORDERED THAT** this *Order* shall be sent by regular mail and by certified mail, return receipt requested, to Playa del Sol Broadcasters, 801 K Street, 27th Floor, Sacramento, California 95814 and its counsel, Lauren A. Greenberg, Esq., Crispin & Associates, P.L.L.C., 555 13th Street, NW, Suite 420 West, Washington, DC 20004.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau

¹⁷ See 47 C.F.R. § 1.1914.