

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

In the Matter of	)	
	)	
Gold Coast Radio, LLC	)	File Number: EB-06-LA-114
	)	
Licensee of Station KMLA	)	NAL/Acct. No.: 200732900003
El Rio, California	)	FRN: 0003745254
Facility ID # 55273	)	

**FORFEITURE ORDER**

**Adopted: June 11, 2007****Released: June 13, 2007**

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 three thousand, two hundred dollars (\$3,200) to Gold Coast Radio, LLC ("Gold Coast"), licensee of station KMLA, an FM broadcast station serving El Rio, California, for repeatedly violating Section 73.1560(b) of the Commission's Rules (Rules).<sup>1</sup> On December 22, 2006, the Enforcement Bureau's Los Angeles Office issued a *Notice of Apparent Liability for Forfeiture* ("NAL") in the amount of \$4,000 to Gold Coast for repeatedly operating its transmitter at a power level exceeding 105% of that authorized by its license.<sup>2</sup> In this *Order*, we consider Gold Coast's arguments that an admonishment, rather than the base forfeiture amount, should be issued for the violation, and that the forfeiture amount should be reduced because Gold Coast has a history of compliance with the Commission's Rules.

**II. BACKGROUND**

2. On August 29, 2006, in response to complaints, Los Angeles agents monitored and made field strength measurements of KMLA's transmitted signal from a location 7 kilometers from the KMLA transmitter site. At that location, the field strength was measured at 17.2 mV/m, when measured with a field strength meter. The agents also set up a spectrum analyzer and sampling antenna at their hotel and observed the emissions mask and relative strength of the KMLA transmitter emissions. Agents made periodic observations at several times during the day and evening of August 29, 2006, and observed that the level of the signal transmitted by KMLA did not change.

3. On August 30, 2006, the Los Angeles agents, after observing the signal level on the spectrum analyzer was consistent with their observations from the previous day, inspected the KMLA transmitter and observed the transmitter power meter which indicated that the KMLA transmitter output was 1022 watts. According to the station's license, KMLA is authorized to operate at 530 watts. The agents also interviewed KMLA station management personnel who reported that the station had been operating without a Chief Engineer or designated Chief Operator for a period of one month, and that there was no one available to adjust the transmitter. After the transmitter inspection, the Los Angeles agents again measured the field strength of the KMLA signal from the same location as the previous day. At that

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<sup>1</sup> 47 C.F.R. § 73.1560(b).

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732900003 (Enf. Bur., Western Region, Los Angeles Office, released December 22, 2006).

location, the field strength was measured at 16.7 mV/m, when measured with a field strength meter, indicating a variance of 0.25 dB from the day before. The agents also observed the spectrum analyzer set up in the hotel room and noted that the KMLA signal level had not changed from the observations made on August 29, 2006, and earlier on August 30, 2006.

4. On December 22, 2006, the Los Angeles Office issued a *NAL* in the amount of \$4,000 to Gold Coast, finding that Gold Coast apparently repeatedly operated its transmitter at a power level exceeding 105% of that authorized by its license. Gold Coast filed a response ("*Response*") on January 18, 2007, arguing that an admonishment, rather than the base forfeiture amount, should be issued for that violation, and that the forfeiture amount should be reduced because Gold Coast has a history of compliance with the Commission's Rules

### III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>3</sup> Section 1.80 of the Rules,<sup>4</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("*Forfeiture Policy Statement*").<sup>5</sup> In examining Gold Coast'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>6</sup>

6. Section 73.1560(b) states: "*FM stations*. Except as provided in paragraph (d) of this section, the transmitter output of an FM station... must be maintained as near as practicable to the authorized transmitter output power and may not be less than 90%, nor more than 105% of the authorized power."<sup>7</sup> On August 29, 2006, and August 30, 2006, Los Angeles agents, through multiple observations and field strength measurements, determined that KMLA was operating at approximately 190% of its authorized power of 530 watts.

7. Gold Coast does not dispute the facts detailed above concerning the overpower operation of the KMLA transmitter. Instead, Gold Coast argues that the base forfeiture of \$4000 should be considerably reduced because if the *Forfeiture Policy Statement* and the statutory factors set forth in 503(b)(2)(D) are applied to this case, the sanction be an admonishment. We disagree. We are required to "determine whether to issue a warning or assess a forfeiture based on the nature and circumstances of the violation."<sup>8</sup> As stated in the *NAL*, the Los Angeles Office took into account the statutory factors and the *Forfeiture Policy Statement* when assessing the proposed \$4,000 forfeiture amount. In its *Response*, Gold Coast offers no evidence to contradict the Los Angeles Office's determination concerning the nature, circumstances, extent and gravity of the violation and, with respect to the Gold Coast, the degree of culpability, ability to pay, and other such matters as justice may require. Gold Coast only offers the statement that it "has never before been cited for any rule violation" and therefore, the forfeiture amount should be reduced. We have reviewed our records and we agree. Therefore, we find that Gold Coast has shown only one factor, history of prior offenses, as relevant to sustain a reduction of the base forfeiture

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<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> 47 C.F.R. § 1.80.

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

<sup>6</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>7</sup> 47 C.F.R. § 73.1560(b) (Operating power and mode tolerances).

<sup>8</sup> *Forfeiture Policy Statement*, 12 FCC Rcd at 17102.

amount. Consequently, we reduce the forfeiture amount to \$3,200.

8. Gold Coast argues that the forfeiture should be cancelled because of Gold Coast's "exemplary history of overall compliance," and cites to *Tidewater Communications, Inc.*<sup>9</sup> In *Tidewater*, the Enforcement Bureau ("Bureau") cancelled a \$10,000 forfeiture assessed against Tidewater Communications for willfully failing to light its antenna structure in Windsor, Virginia, in violation of Section 17.51(a) of the Rules.<sup>10</sup> The Bureau noted that Tidewater had produced evidence showing, among other things,<sup>11</sup> that Tidewater had made good faith efforts to inspect the antenna structure lights and light extinguishment alarm system prior to the inspection which resulted in the forfeiture. The Bureau also noted that Tidewater had a history of compliance with the Commission's Rules. In the present case, while we acknowledge that Gold Coast has a history of compliance with the Rules, Gold Coast has produced no evidence to support it made a good faith effort to comply with Section 73.1560(b) or, for that matter, what efforts, if any, it has taken to resolve the violation and prevent its recurrence. Reductions based on good faith efforts to comply generally involve situations where violators demonstrate that they initiated measures to correct or remedy violations prior to a Commission inspection or investigation.<sup>12</sup> Because Gold Coast has failed to demonstrate any good faith efforts to comply, we reject this argument.

9. Based on the information before us, having examined it according to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*, we find that reduction of the proposed forfeiture to \$3,200 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, Gold Coast Radio, LLC, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$3,200 for repeatedly violating Section 73.1560(b) of the Rules.<sup>13</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>14</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.

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<sup>9</sup> 18 FCC Rcd 5524 (EB 2003).

<sup>10</sup> 47 C.F.R. § 17.51(a).

<sup>11</sup> The evidence apparently also included technical information on what caused the apparent rule violation and steps taken to prevent the apparent violation from recurring. 18 FCC Rcd at 5525.

<sup>12</sup> See *Radio One Licenses, Inc.*, 18 FCC Rcd 15964, 15965 (2003), *recon. denied*, 18 FCC Rcd 25481 (2003).

<sup>13</sup> 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.1560(b).

<sup>14</sup> 47 U.S.C. § 504(a).

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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 Gold Coast Radio, LLC, at its address of record, and David Tillotson, Esquire, its counsel of record.

**FEDERAL COMMUNICATIONS COMMISSION**

Rebecca L. Dorch  
Regional Director, Western Region  
Enforcement Bureau

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<sup>15</sup> See 47 C.F.R. § 1.1914.