

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

In the Matter of)	
)	
Pembrook Pines Elmira, LTD)	EB-06-BF-008
Antenna Structure Registrant)	EB-06-BF-009
ASR#s1008080 and 1008079)	EB-06-BF-010
Licensee of Stations)	EB-06-BF-011
WEHH(AM), Elmira Hts-Horseheads, NY)	
WELM(AM), Elmira, NY)	NAL/Acct. No. 200732280001
Facility IDs # 55271, 52120)	FRN 0003744174

FORFEITURE ORDER

Adopted: March 4, 2008

Released: March 6, 2008

By the Acting Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of fifteen thousand two hundred dollars (\$15,200) to Pembrook Pines Elmira, Ltd. (“Pembrook”), licensee of stations WEHH(AM), Elmira Heights-Horseheads, NY, and WELM(AM), Elmira, NY, and registrant of antenna structure numbers 1008080 and 1008079 in Elmira, NY, for willfully and repeatedly violating Sections 17.48(a), 17.51(a), and 73.1745(a) of the Commission's Rules (“Rules”)¹ by failing to comply with antenna structure lighting requirements, failing to notify the FAA of an antenna structure light outage, and failing to operate its AM stations consistent with the modes and power authorized in the stations’ licenses.

II. BACKGROUND

2. On January 12, 2007, the Buffalo Field Office issued a Notice of Apparent Liability for Forfeiture (“*NAL*”) in the amount \$19,000 to Pembrook for failure to comply with antenna structure lighting requirements, failure to notify the FAA of an antenna structure light outage, and failure to operate its AM stations consistent with the modes and power authorized in the stations’ licenses. In its response to the *NAL*, Pembrook does not dispute the findings in the *NAL*, but requests a reduction in the forfeiture amount on two grounds. First, Pembrook argues that assessing a forfeiture of \$3,000 for failing to notify the Federal Aviation Administration (“FAA”) in addition to the \$8,000 for failing to comply with the antenna structure lighting requirements is inconsistent with Commission precedent. Pembrook claims that the Commission previously has not treated the failure to notify the FAA as a separate violation and Pembrook therefore requests that the forfeiture amount be reduced by \$3,000. Second, Pembrook requests that the overall fine be reduced by no less than \$2,000 to reflect its history of compliance with the Commission’s Rules.

¹ 47 C.F.R. §§ 17.48(a), 17.51(a), and 73.1745(a).

III. DISCUSSION

3. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,² Section 1.80 of the Rules,³ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement").⁴ In examining Pembrook'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.⁵

4. We decline to cancel the \$3000 forfeiture for Pembrook's failure to notify the FAA of the tower light outage. The cases cited by Pembrook in support of its position are inapposite.⁶ In those cases, we did not make a finding that the tower owners were aware of the light outages prior to an inspection by FCC agents. Here, there is undisputed evidence that Pembrook was aware of the light outage as early as September 28, 2005. We believe that it is appropriate, and consistent with precedent, to assess an additional \$3,000 forfeiture where there is evidence that the tower owner knew of a light outage prior to the inspection by FCC agents and failed to notify the FAA.⁷ We therefore decline to reduce the proposed forfeiture amount by \$3,000. We agree with Pembrook, however, that a reduction is warranted based on its history of compliance with the Commission's Rules and we reduce the forfeiture by \$3,800.

5. 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 \$15,200 is warranted.

IV. ORDERING CLAUSES

6. **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, Pembrook Pines Elmira, LTD, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$15,200 for willfully and repeatedly violating Sections 17.48(a), 17.51(a), and 73.1745(a) of the Commission's Rules.⁸

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

² 47 U.S.C. § 503(b).

³ 47 C.F.R. § 1.80.

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

⁵ 47 U.S.C. § 503(b)(2)(E).

⁶ *South Central Communications Corporation*, Forfeiture Order, 18 FCC Rcd 700 (2003); *Mortenson Broadcasting Co.*, 18 FCC Rcd 9577 (2003); *Wings Communications, Inc.*, Forfeiture Order, 19 FCC Rcd 8855 (2004); *Forever of PA, Inc.*, Forfeiture Order, 2008 WL 476889 (2008); *Lotus Communications Corp.*, Forfeiture Order, 20 FCC Rcd 11549 (2005).

⁷ See e.g., *American Radio Brokers, Inc.*, Forfeiture Order, 20 FCC Rcd 5165 (2005); *WLTH Radio, Inc.*, Forfeiture Order, 19 FCC Rcd 23612 (2004), *petition for recon. granted in part denied in part*, Memorandum Opinion and Order, 21 FCC Rcd 3580 (2006) (reducing forfeiture amount based on demonstrated inability to pay).

⁸ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 17.48(a), 17.51(a), and 73.1745(a).

Act.⁹ 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/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

8. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Pembroke Pines Elmira, LTD at its address of record, and Harry F. Cole, its counsel of record.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
Acting Regional Director, Northeast Region
Enforcement Bureau

⁹ 47 U.S.C. § 504(a).