

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
WMGO Broadcasting Corp., Inc.)	File No. EB-05-IH-0120
)	NAL Account No. 200732080019
Licensee of Station)	FRN No. 0008130353
WMGO(AM), Canton, Mississippi)	Facility ID No. 73259

FORFEITURE ORDER

Adopted: March 6, 2008

Released: March 6, 2008

By the Acting Chief, Investigations and Hearings Division, Enforcement Bureau

I. INTRODUCTION

1. In this *Forfeiture Order*, we assess a monetary forfeiture in the amount of \$6,400 against WMGO Broadcasting Corp., Inc. (“WMGO” or the “Licensee”), licensee of Station WMGO(AM), Canton, Mississippi (the “Station”), for violating Section 73.1206 of the Commission’s rules by willfully recording and broadcasting a telephone conversation without first informing the other party to the conversation of its intention to do so.¹

II. BACKGROUND

2. On January 7, 2005, the Commission received a complaint (“Complaint”) from Mr. Luke Gordon alleging that Mr. Jerry Lousteau, the owner of Station WMGO and the host of its morning news show, telephoned Mr. Gordon on January 6, 2005, to discuss a matter involving Mr. Gordon’s personal life.² According to the Complaint, when Mr. Gordon returned the phone call to the Station, Mr. Lousteau failed to notify Mr. Gordon that the conversation was being recorded or that it would be broadcast on the news program the next morning.³

3. On June 29, 2005, the Enforcement Bureau issued a Letter of Inquiry (“LOI”) to the Licensee regarding the alleged telephone broadcast.⁴ In its response (“LOI Response”), WMGO stated that although it had placed a phone call to Mr. Gordon around January 6, 2005, it was unsuccessful in contacting him.⁵

¹ See 47 C.F.R. § 73.1206.

² See E-mail message from Luke Gordon to Tom Hutton, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated January 7, and 12, 2005 (“Complaint”).

³ See Complaint at 1. Mr. Gordon also alleged that the Station later broadcast excerpts of the recorded telephone conversation on January 7, 10, and 11, 2005.

⁴ See Letter from William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission to WMGO Broadcasting Corp., Inc., dated June 29, 2005 (“LOI”).

⁵ See Letter from Jerry Lousteau to David Brown, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated July 18, 2005 at 1 (“LOI Response”).

4. Shortly after the Commission received the Licensee's LOI Response, the complainant, Mr. Gordon, sent the Commission an audiotape recording containing part of the telephone conversation that was aired by the Station.⁶ In light of this evidence, a follow-up LOI ("Second LOI") was sent to the Licensee directing it to confirm the authenticity of the audiotape recording and to provide the identities of the voices on the tape.⁷ In its Second LOI Response, the Licensee confirmed that the audio recording was a telephone conversation between Mr. Lousteau and Mr. Gordon.⁸ The Licensee argued that, despite this evidence, there is no violation of Section 73.1206 because it was not required to inform the caller that the conversation would be recorded and broadcast since it was Mr. Gordon that placed the call, and not the Station.⁹ The Licensee added that Mr. Gordon had participated in previous interviews with the Station and "has always been aware of the taping for broadcast."¹⁰

5. On March 2, 2007, we issued a Notice of Apparent Liability ("NAL") for \$8,000.¹¹ We rejected the Licensee's argument that it had no responsibility under the rule to inform Mr. Gordon of the Station's intention to record and broadcast the conversation because it was Mr. Gordon who called the Station, albeit to return the Licensee's call to him. As we determined, the record did not reflect that the caller, Mr. Gordon, had knowledge as contemplated by our rules of the Licensee's intent to record the call for broadcast merely because he was returning Mr. Lousteau's call. As we stated in the *NAL*, "[i]n returning the phone call, the Complainant was contacting Mr. Lousteau, and not a live call-in or 'open mike' show, where he could expect to have his discussion broadcast and/or simultaneously recorded."¹² We therefore concluded that the Licensee recorded and broadcast the conversation without providing the required notice to Mr. Gordon, in apparent violation of Section 73.1206.¹³ Although the Commission's forfeiture guidelines establish a base forfeiture amount of \$4,000 for the unauthorized broadcast of a telephone conversation, the proposed forfeiture amount in the *NAL* was adjusted to \$8,000 because the Licensee was found to have aired the conversation on at least three separate occasions (*i.e.*, January 7, 10, and 11, 2005).¹⁴

6. On March 23, 2007, WMGO filed a response to the *NAL* ("NAL Response").¹⁵ WMGO states that it does not dispute the findings in the *NAL*, but nevertheless urges that we cancel or reduce the

⁶ See Letter from Luke Gordon to David Brown, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated July 20, 2005.

⁷ See Letter from William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission to WMGO Broadcasting Corp., Inc., dated January 17, 2006 ("Second LOI"). We also instructed the Licensee to review its initial LOI Response and make any revisions that it believed were necessary.

⁸ See Letter from Jerry Lousteau to Tom Hutton, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated February 3, 2006 ("Second LOI Response").

⁹ See *id.*

¹⁰ *Id.*

¹¹ See *WMGO Broadcasting Corp.*, Notice of Apparent Liability, 22 FCC Rcd 4217 (Enf. Bur., Investigations & Hearings Div. March 2, 2007) ("*NAL*").

¹² *Id.*, 22 FCC Rcd at 4220 ¶ 9.

¹³ See *id.*

¹⁴ See *id.*, 22 FCC Rcd at 4221 at ¶ 10.

¹⁵ See Letter from Jerry Lousteau to Hillary S. DeNigro, Chief, Investigations And Hearing Divisions, Enforcement Bureau, Federal Communications Commission dated March 23, 2007, at 1 ("*NAL Response*").

proposed \$8,000 forfeiture.¹⁶ In support of its request, the Licensee notes that it has “a long history of broadcasting responsible and unbiased news for the local community.”¹⁷ It also states that payment of the fine would force the Station to raise advertising rates and “cause damage to this station and to the community.”¹⁸ Finally, WMGO requests that the Commission consider the Station’s “overall record of broadcast compliance and reduce the fine accordingly.”¹⁹

III. DISCUSSION

7. WMGO does not dispute the merits of our apparent finding in the *NAL* that it violated Section 73.1206 of the Commission’s rules and we therefore affirm that holding. Nevertheless, WMGO contends that we should cancel or reduce the forfeiture. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act,²⁰ Section 1.80 of the Commission’s Rules,²¹ and the Commission’s forfeiture guidelines set forth in its *Forfeiture Policy Statement*.²² In assessing forfeitures, 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 other matters as justice may require.²³ As discussed further below, we have examined WMGO’s response to the *NAL* pursuant to the aforementioned statutory factors, our rules, and the *Forfeiture Policy Statement*, and find no basis for cancellation of the forfeiture. We find, however, that a reduction of the forfeiture amount from \$8,000 to \$6,400 based on WMGO’s prior history of compliance with the Commission’s rules is appropriate.

8. WMGO argues the forfeiture would negatively impact the station’s financial situation and specifically that it “would almost certainly force us to raise our [advertising] rates.”²⁴ This argument is not sufficient to cause the Commission to reduce the forfeiture based on the Station’s inability to pay. In making any financial hardship claim, WMGO was specifically directed in the *NAL* to submit documentation, such as tax returns, to corroborate its financial status.²⁵ WMGO failed to do so.²⁶

¹⁶ See *id.* at 1. (“[T]he purpose of this letter is not to dispute the facts of the case, nor is it to dispute the findings of the Commission. Instead, I humbly and respectfully ask the Commission [to] eliminate or reduce the \$8,000 fine proposed . . .”).

¹⁷ *Id.* As an example, WMGO points to local newscasts that have saved its community of license “millions of dollars over the years by exposing corruption and reckless spending.” *Id.* at 2.

¹⁸ *Id.* at 2-3.

¹⁹ *Id.* at 2. The Licensee has also filed a letter in support of its request to reduce or eliminate the proposed forfeiture from Matthew Wesolowski of Station WYAB(FM), Flora, Mississippi. See Letter from Matthew Wesolowski, Chief Executive Officer, SSR Communications, Inc. to Gordon J. Lousteau, President, WMGO Broadcasting Company, dated March 23, 2007. In that letter, Mr. Wesolowski praises WMGO’s news coverage and its commitment to local broadcasting. He also argues that imposition of the fine would negatively impact the listening public in Madison County as well as the local broadcasting community, creating “an aura of uncertainty as to what the Commission is truly seeking from radio station operators.” *Id.* at 3.

²⁰ See 47 U.S.C. § 503(b).

²¹ See 47 C.F.R. § 1.80.

²² See *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

²³ See 47 U.S.C. § 503(b)(2)(D).

²⁴ See *NAL* Response at 2.

²⁵ See *NAL*, 22 FCC Rcd at 4221 ¶ 15.

Therefore, we find no basis for cancelling or reducing the total forfeiture amount on these grounds.

9. WMGO also asks that we consider reducing the forfeiture amount based on its “overall record of broadcast compliance” with the Commission’s Rules.²⁷ We have reviewed our records and note no other violations against the Licensee. Under similar circumstances, we have reduced proposed forfeitures, and find that doing so in this case is appropriate.²⁸ Consequently, we reduce WMGO’s forfeiture amount from \$8,000 to \$6,400.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act²⁹ and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,³⁰ WMGO Broadcasting Corp., Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$6,400 for willful violation of Section 73.1206 of the Commission’s Rules.³¹

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 *Forfeiture 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.³² 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

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²⁶ See *Webnet Communications, Inc.*, Order of Forfeiture, 18 FCC Rcd 6870, 6878 ¶ 16 (2003) (rejecting request to reduce forfeiture based on inability to pay because licensee failed to provide relevant financial documentation); *Commonwealth License Subsidiary, LLC*, Forfeiture Order, 18 FCC Rcd 20483, 20486 ¶ 10 (Enf. Bur. 2003) (same). Compare *KM Television of Flagstaff, L.L.C.*, Order, 22 FCC Rcd 5027, 5029 ¶ 8 (Enf. Bur., Western Region, Los Angeles Office, 2007) (cancelling proposed forfeiture based on financial hardship is warranted where licensee submitted three years of financial data showing its inability to pay).

²⁷ See NAL Response at 2.

²⁸ See, e.g., *KOFI, Inc.*, Forfeiture Order, 20 FCC Rcd 17886 (Enf. Bur., Investigations & Hearings Div. 2005) (proposed forfeiture for violation of telephone broadcast rule, Section 73.1206, reduced from \$6,000 to \$4,000 because of Station’s prior record of overall compliance with FCC rules); *Max Media of Montana, L.L.C.*, Forfeiture Order, 18 FCC Rcd 21375, 21379 ¶ 14 (Enf. Bur. 2003) (reducing proposed forfeiture from \$11,000 to \$8,800 in light of unblemished history of compliance with Commission regulations); *South Central Communications Corp.*, Forfeiture Order, 18 FCC Rcd 700, 702 ¶ 9 (Enf. Bur. 2003) (reducing proposed forfeiture from \$10,000 to \$8,000 due to licensee history of compliance with Commission rules).

²⁹ See 47 U.S.C. § 503(b).

³⁰ See 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

³¹ See 47 C.F.R. § 73.1206.

³² See 47 U.S.C. § 504(a).

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.

12. **IT IS FURTHER ORDERED** that a copy of this *Forfeiture Order* shall be sent, by First Class Mail and Certified Mail Return Receipt Requested, to WMGO Broadcasting Corp., Inc., 360 Northern Liberty Street, Canton, Mississippi 39046, and to Mr. Luke Gordon, 257 Glenfield, Canton, Mississippi 39046.

FEDERAL COMMUNICATIONS COMMISSION

Benigno E. Bartolome
Acting Chief, Investigations and Hearings Division
Enforcement Bureau