

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

In the Matter of)	
)	
Pentecostal Temple Development Corporation)	File Number EB-07-PA-321
)	
Licensee of Station WGBN(AM))	NAL/Acct. No. 200832400009
New Kensington, Pennsylvania)	
Facility ID # 52241)	FRN 0008-65-6506

FORFEITURE ORDER

Adopted: September 1, 2009

Released: September 3, 2009

By the Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of five thousand dollars (\$5,000) to Pentecostal Temple Development Corporation (“PTDC”), licensee of AM station WGBN, in New Kensington, Pennsylvania, for willfully and repeatedly violating Sections 73.1745(a), 1.903(a), and 73.3526(e)(12) of the Commission’s Rules (“Rules”)¹ by failing to operate its broadcast station in a manner which complies with the terms of the station authorization, operating a Studio Transmitter Link on an unauthorized frequency, and failing to maintain radio issues/programs lists in the station’s public inspection file.

II. BACKGROUND

2. The license for WGBN specifies that PTDC must operate the station with a two-tower directional antenna array with an antenna input power of 1080 Watts during the daytime and 76 Watts during the nighttime. On November 6, 2007, and November 7, 2007, an agent with the FCC’s Philadelphia Office measured the field intensities of WGBN on 1150 kHz at the station’s monitoring points to determine if the station was maintaining the directional antenna pattern within prescribed limits. On November 6, 2007 at 8:11 p.m. local time, the agent measured a field intensity of 32 mV/m at the monitoring point along the 286 degree radial. The agent found that the field intensity exceeded the licensed limit of 23.5 mV/m by 36 percent. On November 7, 2007 at 12:53 p.m. local time, the agent measured a field intensity of 73 mV/m at the monitoring point along the 286 degree radial. The agent found that the field intensity exceeded the licensed limit of 23.5 mV/m by 210 percent.

¹ 47 C.F.R. §§ 73.1745(a), 1.903(a), and 73.3526(e)(12).

3. On November 7, 2007, at 1:45 p.m., the agent went to the WGBN main studio, which is located at 560 7th Street, New Kensington, Pennsylvania 15068, and met with the station's Chief Operator. While at the main studio, the agent reviewed the contents of the station's public inspection file. The agent observed that PTDC maintained a separate folder for each item in its public inspection file. When the agent opened the folder labeled "Issues Lists," he found a radio issues/programs list for the period between April 12, 2003 and May 15, 2004. The agent found that the public inspection file did not contain the radio issues/programs lists for the period between August 2, 2006 and November 7, 2007. PTDC was required to maintain in the public inspection file all quarterly radio issues/program lists that it had prepared since August 2, 2006, the grant date of the latest WGBN renewal application.

4. On November 7, 2007, at about 3:30 p.m., the agent and Chief Operator went to the WGBN transmitter site, where the agent observed that one of the WGBN antenna structures (ASR Number 1048261) had been dismantled and PTDC was using the remaining WGBN antenna structure (ASR Number 1048262) as the station's non-directional antenna. The Chief Operator stated that PTDC had completely dismantled one of the station's two antenna structures because it was damaged in a storm and that WGBN was currently operating at reduced power with a non-directional antenna.

5. During the inspection at the WGBN transmitter site, the agent had PTDC switch the station between daytime and nighttime modes while he observed the transmitter's metering. When the station was operating in daytime mode, the agent measured that station's antenna input power to be 264.5 Watts or 24.5 percent of the authorized power during the daytime. When the station was operating in nighttime mode, the agent measured the station's antenna input power to be 40.5 Watts or 53.2 percent of the authorized power during the nighttime. At the time of the inspection, PTDC was unable to provide the agent with any authorization from the Commission to operate station WGBN at reduced power or with a non-directional antenna.

6. When the agent returned to the WGBN main studio location, he inspected the station's Marti Studio Transmitter Link (Model STL-10). The agent used a frequency counter to measure that the Studio Transmitter Link operated on the frequency 947.8559 MHz. At the time of the inspection, PTDC was unable to provide the agent with any authorization from the Commission to operate a Studio Transmitter Link on the frequency 947.8559 MHz. PTDC did provide the agent with a copy of the license for station WPXQ800 authorizing operation of a Studio Transmitter Link at the WGBN main studio on the frequency 948.875 MHz.

7. On January 4, 2008, the Philadelphia Office issued a Letter of Inquiry to PTDC to follow up on issues resulting from the inspection of station WGBN. By letter dated January 31, 2008, PTDC submitted a response to the Letter of Inquiry. In the response, PTDC stated that it had not been able to operate station WGBN in directional mode since June 11, 2007, due to damage the station suffered to both of its antenna structures. PTDC also stated that between June 11, 2007, and November 7, 2007, it operated station WGBN at 250 Watts in non-directional mode. PTDC also said that it did not notify the Commission in writing prior to November 7, 2007 that station WGBN was operating with a non-directional antenna or at reduced power.² In the response, PTDC acknowledged that it was operating the

² On November 8, 2007, PTDC submitted an application (File No. BSTA-20071108AFE) for special temporary authorization to operate station WGBN at reduced power due to damage to the station's transmitter suffered during a storm. On November 9, 2007, the Commission granted Special Temporary Authority ("STA"). Because PTDC did not notify the Commission in its original STA request that station WGBN was also operating with a non-directional antenna, PTDC submitted a modification of the STA on November 16, 2007. On November 16, 2007, the Commission granted the request for modification of Special Temporary Authority authorizing PTDC to operate (continued....)

station's Studio Transmitter Link on the frequency 947.8559 MHz since at least the past six months. PTDC reported that, on November 14, 2007, it re-crystallized the Studio Transmitter Link to operate on the frequency 948.875 MHz. In the response, PTDC also acknowledged that at the time of the inspection the public inspection file did not contain the radio issues/program lists for the period between August 2, 2006 and November 7, 2007. PTDC stated that it has drafted the radio issues/programs lists for all quarters since August 2, 2006 and placed them in the WGBN public inspection file.

8. On August 5, 2008, the Philadelphia Office issued a Notice of Apparent Liability for Forfeiture ("NAL") to PTDC in the amount of \$15,000 for apparently willfully and repeatedly violating Sections 73.1745(a), 1.903(a), and 73.3526(e)(12) of the Rules³ by failing to operate its broadcast station in a manner which complies with the terms of the station authorization, operating a Studio Transmitter Link on an unauthorized frequency, and failing to maintain radio issues/programs lists in the station's public inspection file.⁴ In its response, PTDC does not dispute any of the findings in the *NAL*, but requests a reduction in the proposed forfeiture for the public file violation on the grounds that it is inconsistent with Commission precedent; requests a reduction in the forfeiture proposed for failure to comply with the terms of its station authorization on the ground that operating at reduced power is less serious than operating at excessive power and therefore warrants a lower forfeiture amount; and requests a reduction in the overall forfeiture amount based on its inability to pay and its history of compliance with the Commission's Rules.⁵

III. DISCUSSION

9. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁶ Section 1.80 of the Rules,⁷ and the *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁸ In assessing forfeitures, Section 503(b)(2)(D) 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 such other matters as justice may require.⁹ As discussed below, we have considered PTDC's response to the *NAL* in light of these statutory factors and have found that a reduction of the proposed forfeiture amount to \$5,000 is warranted based on PTDC's financial circumstances.

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station WGBN with an emergency non-directional antenna and reduced power not to exceed 250 Watts daytime and 17.5 Watts nighttime.

³ 47 C.F.R. §§ 73.1745(a), 1.903(a), and 73.3526(e)(12).

⁴ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832400009 (Enf. Bur., Philadelphia Office, rel. August 5, 2008).

⁵ We note that, although PTDC captioned its filing as a petition for reconsideration, we have not yet issued a forfeiture order, which would constitute a final Commission action, and which is a condition precedent to filing a petition for reconsider. See 47 C.F.R. § 1.106. We therefore will treat PTDC's filing as a response to the *NAL*.

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

⁹ 47 U.S.C. § 503(b)(2)(D).

10. We do not agree that we should reduce the forfeiture based on the cases cited by PTDC in which the licensee received a forfeitures less than \$4,000 for missing issues/programs lists. The latest Notice of Apparent Liability cited by PTDC was released on August 26, 2005.¹⁰ Recent cases have consistently assessed forfeitures of \$4,000 for missing two or more quarters of Issues/Programs lists.¹¹ Accordingly, we decline to reduce the forfeiture, as it is consistent with current forfeiture amounts.

11. We also decline to reduce the forfeiture based on PTDC's claim that operating a station at a reduced power level is not as egregious as operating it with excessive power and that no harm to the public or to other licensees occurred. While it may be true that operation at a reduced power level will not cause harm to other licensees, it is well established that the absence of harm is not considered a mitigating factor of a rule violation.¹² More importantly, as noted in the *NAL*, the Commission contemplated the kind of situation PTDC faced when its antenna was damaged by a storm. Section 73.1635(a) of the Rules permits a licensee to seek special temporary authority to operate a broadcast facility for a limited period at a specified variance from the terms of the station authorization. Section 73.1635(a)(3) of the Rules specifically states that a request for an STA necessitated by unforeseen equipment damage or failure may be made without regard to the procedural requirements of Section 73.1635. PTDC, however, did not file a request for an STA until after the inspection conducted by the FCC agent and PTDC has not provided any explanation for why it did not request an STA as soon as it was required to operate at variance from its license. We therefore conclude that a reduction in the forfeiture for violation of Section 73.1745(a) is not warranted.

12. We likewise conclude that a reduction is not warranted based on PTDC's alleged history of compliance with the Commission's rules. A review of the Commission's records revealed that the Philadelphia Office issued a Notice of Apparent Liability for Forfeiture in the amount of \$3,000 to PTDC on March 28, 2003, which PTDC subsequently paid.

13. With regard to PTDC's request for a reduction based on its inability to pay, the

¹⁰ See *Gerald Parks*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200532360003 (Enf. Bur. Detroit Office, August 26, 2005), Forfeiture Order, 21 FCC Rcd 14338 (2006). In *Twenty-One Sound Communications*, the Bureau reduced the forfeiture associated with the public file violation from \$10,000 to \$3,000 in the Forfeiture Order, however, that order was released July 27, 2005. *Twenty-One Sound*, Forfeiture Order, 20 FCC Rcd 12496 (Enf. Bur. South Central Region 2005).

¹¹ See, e.g., *James J. Chladek*, Forfeiture Order, 2009 WL 2244504 (EB, July 28, 2009); *Hensley Broadcasting, Inc.*, Forfeiture Order, 24 FCC Rcd 115 (EB 2009); *Fannin County Broadcasting*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200732480007 (Enf. Bur. Atlanta Office, February 8, 2007), *Community Broadcast Group*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200732500003 (Enf. Bur. Dallas Office, January 30, 2007), *Cumulus Licensing, LLC*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200732700006 (Enf. Bur. Tampa Office, January 3, 2007), *Multicultural Radio Broadcasting Licensee*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200732940003 (Enf. Bur. San Diego Office, December 28, 2006), *Access.1 NY License Company, LLC*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 20073238000 (Enf. Bur. New York Office, July 12, 2006).

¹² See *Liberty Cable Co.*, Memorandum Opinion and Order, 16 FCC Rcd 16105 (2001); *Pacific Western Broadcasters, Inc.*, Memorandum Opinion and Order, 50 FCC 2d 819 (1975); *AGM-Nevada, LLC*, Forfeiture Order, 18 FCC Rcd 1476 (Enf. Bur. 2003); *Bureau D'Electronique Appliquee, Inc.*, Forfeiture Order, 20 FCC Rcd 17893 (SED Enf. Bur. 2005); *Western Slope Communications, LLC*, Forfeiture Order, 23 FCC Rcd 8384 (WR Enf. Bur. 2008).

Commission has determined that a licensee's gross revenues are the best indicator of an inability to pay.¹³ While we find that PTDC willfully and repeatedly violated Sections 73.1745(a), 1.903(a), and 73.3526(e)(12) of the Rules, we conclude, based upon our review of PTDC's supporting financial documentation, that pursuant to Section 503(b) of the Act and the *Forfeiture Policy Statement*, a reduction of the \$15,000 forfeiture to \$5,000 is warranted.

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules¹⁴ that Pentecostal Temple Development Corporation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five thousand dollars (\$5,000) for willful and repeated violation of 47 C.F.R. §§ Sections 73.1745(a), 1.903(a), and 73.3526(e)(12).

15. 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. 20554.¹⁵ Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Pentecostal Temple Development Corporation shall also send electronic notification on the date said payment is made to NER-Response@fcc.gov.

16. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Pentecostal Temple Development Corporation's address of record.

FEDERAL COMMUNICATIONS COMMISSION

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

¹³ *PJB Communications of Virginia, Inc.* Memorandum Opinion and Order, [7 FCC Rcd 2088 \(1992\)](#) (“*PJB Communications*”).

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

¹⁵ See 47 C.F.R. § 1.1914.