

)	
In the Matter of)	
)	File Number EB-08-DV-0142
Media Logic LLC)	
)	NAL/Acct. No. 200932800002
Licensee of Station WQHV648)	FRN: 0007538937
Sterling, Colorado)	
)	

¹ 47 C.F.R. §§ 1.903(a), 1.947(a), and 74.532(e).

longitude. A review of the Commission's databases revealed that a modification application to change the coordinates for station WQHV648 was filed on July 16, 2008.² An amendment to this application was filed on July 17, 2008. The modification application was granted on August 28, 2008.

4. On November 26, 2008, the Denver Office issued a *NAL* in the amount of \$4,000 to Media Logic.³ In the *NAL*, the Denver Office found that Media Logic apparently willfully and repeatedly violated Sections 1.903(a), 1.947(a), and 74.532(e) of the Rules by failing to operate station WQHV648 from its licensed location. Media Logic filed a response ("*Response*") to the *NAL* on December 24, 2008. In its *Response*, Media Logic argues that it relied on coordinates given to it by the owner of the building in which it was located, that it made good faith efforts to comply with the Rules, and that it 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,⁴ Section 1.80 of the Rules,⁵ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁶ In examining the *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.⁷

6. Section 1.903(a) of the Rules requires that stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service and with a valid authorization granted by the Commission.⁸ Section 1.947(a) of the Rules requires that all major modifications as defined in Section 1.929 of the Rules require prior Commission approval.⁹ Section 1.929(d)(1)(i) of the Rules defines one of the major actions as "any change in transmit antenna location by more than 5 seconds in latitude or longitude for fixed point-to-point facilities."¹⁰ Section 74.532(e) of the Rules states that each aural broadcast auxiliary station will be licensed at a specified transmitter location to communicate with a specified receiving location, and the direction of the main radiation lobe of the transmitting antenna will be a term of the station authorization.¹¹ At the time of the inspection on May 29 and June 2, 2008, Media Logic was found operating radio station WQHV648 from a location

² See File No. 0003505396.

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200932800002 (Enf. Bur., Western Region, Denver Office, released November 26, 2008).

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

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

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ 47 C.F.R. § 1.903(a).

⁹ 47 C.F.R. § 1.947(a).

¹⁰ 47 C.F.R. § 1.929(d)(1)(i).

¹¹ 47 C.F.R. § 74.532(e).

inconsistent with the station's authorized coordinates. The distance separating the point of operation from that of the license was approximately 1.95 miles (approximately 1 minute and 38 seconds of latitude and 35 seconds of longitude).

7. In its *Response*, Media Logic does not dispute the facts recited in the *NAL*. Instead it argues that the coordinates provided to the Commission were based upon coordinates given to Media Logic by the owner of the building in which the STL was constructed. Media Logic states that the building owner relied on a survey he had for the property and at no time did Media Logic intentionally provide inaccurate coordinate to the Commission. Media Logic argues that in a similar case, *North County Repeaters*,¹² a licensee was cited for violations of the rules regarding inaccurate coordinates based on a topographical map dating from the 1980s, prior to the availability of handheld GPS devices, but that the Commission cancelled the forfeiture under those circumstances. Media Logic states that this is the same situation that it faces, that in good faith it provided the coordinates of the buildings for the STL based upon a survey, the date of which Media Logic is unsure, and when checked by the Denver agents, they determined that the “coordinates were slightly off.”¹³

8. We do not find that the circumstances here justify cancellation of the forfeiture. In *North County Repeaters*, the tower which was the subject of the forfeiture was constructed in the 1980's and its coordinates were calculated on a topographical map dating from the 1980's, prior to handheld GPS devices. Those coordinates were then reported to and accepted by the Federal Aviation Administration (“FAA”) in 1992 when the owner of the structure, North County Repeaters (“North County”) filed an application to increase the height of the tower. Those coordinates were then used again when North County registered the tower with the Commission in 1996. The Enforcement Bureau found that, although there was no dispute that the coordinates North County registered for the tower were off by two-tenths of a mile, given the circumstances, that portion of the proposed forfeiture against North County was cancelled.¹⁴ In the present case, the construction of the STL was new and relatively recent: the application for construction of WQHV648 was filed on October 26, 2007, and was granted on November 19, 2007. Unlike the circumstances in *North County Repeaters*, Media Logic is not able to show that WQHV648 had been constructed at the site for decades prior to the Denver agents' inspection, and is not able to show that another federal agency, such as the FAA, had accepted its older data as valid for the location in question. We therefore find that *North County Repeaters* is not dispositive and does not require us to cancel the proposed forfeiture to Media Logic.

9. Media Logic argues that it did not knowingly or intentionally provide inaccurate coordinates to the Commission. However, Media Logic acknowledges that in its filings with the FCC, it specified the coordinates for WQHV648 that were provided to it by the building's owner, who had a survey done at some point in time in the past. The FCC Form 601, Schedule I, which was submitted by Media Logic, clearly requires that all coordinates be referenced to the North American Datum of 1983 (NAD83).¹⁵ The Denver agents, during the investigation, used GPS devices that are part of a mobile

¹² *North County Repeaters*, 19 FCC Rcd 22139 (EB 2004).

¹³ *Response* at 3.

¹⁴ 19 FCC Rcd at 22140 – 22141. The Enforcement Bureau did find that North County willfully and repeatedly violated Section 17.4(g) of the Rules, 47 C.F.R. § 17.4(g), for failing to display the antenna structure registration number in a conspicuous place, and Section 17.50 of the Rules, 47 C.F.R. § 17.50, for failing to clean and repaint the structure as often as possible to maintain good visibility. The Bureau, however, reduced the forfeiture amount to \$2,000 based on North County's inability to pay the proposed forfeiture.

¹⁵ FCC Form 601- Schedule I, July 2007. The instructions to FCC Form 601 – Schedule I requires that coordinates be referenced to NAD83 datum. If the source from which an applicant obtains the coordinates utilizes an older datum, the

direction finding vehicle which utilized NAD83 datum to determine the coordinates of WQHV648. Media Logic apparently did not use NAD83 data when completing its Form 601, as required. Contrary to Media Logic's assertion that the location of the WQHV648 STL was "slightly off," it was actually located almost two miles from the geographic coordinates from which it was licensed to operate. We find that Media Logic did, in fact, provide inaccurate coordinates by failing to provide the required NAD83 coordinates prior to the construction of WQHV648, less than one year before the inspection by the Denver agents.¹⁶

10. Media Logic also argues that it provided the coordinates in good faith. Reductions of proposed forfeitures based on good faith efforts to comply generally involve situations where violators demonstrated that they initiated measures to correct or remedy violations,¹⁷ or that they had established compliance programs in place,¹⁸ prior to the Commission's involvement. Media Logic admits it had no knowledge of the violation until the inspection by the Denver agents and has therefore provided no evidence that it initiated measures to remedy the violation prior to the inspection, or had in place any compliance plan. Media Logic also argues that upon notification by the Denver agents concerning the violation, it took steps to correct the coordinates. The Commission has stated in the past that a licensee is expected to correct errors when they are brought to the licensee's attention and that such correction is not grounds for a downward adjustment in the forfeiture.¹⁹

11. Media Logic also contends that it has a history of overall compliance with the Commission's Rules. We have reviewed our records and we concur. Consequently, we reduce Media Logic's forfeiture amount to \$3,200.

12. We have examined the *Response to the NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Media Logic willfully and repeatedly violated Sections 1.903(a), 1.947(a), and 74.532(e) of the Rules. Considering the entire record and the factors listed above, we find that reduction of the proposed forfeiture to \$3,200 is warranted.

IV. ORDERING CLAUSES

13. **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, Media Logic LLC, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$3,200 for willfully and repeatedly violating Sections 1.903(a), 1.947(a), and 74.532(e) of the Rules.²⁰

14. 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,

coordinates must be converted to NAD83.

¹⁶ See *Intelsat North America LLC*, 21 FCCR 9246 (EB 2006)(Applicants and licensees are required to provide truthful and accurate information to the Commission at all times).

¹⁷ See *Radio One Licenses, Inc.*, 18 FCC Rcd 15964 (2003), *recon. denied*, 18 FCC Rcd 25481 (2003).

¹⁸ See *Tidewater Communications, Inc.*, 18 FCC Rcd 5524, 5525 (EB 2003).

¹⁹ See *AT&T Wireless Services, Inc.* 17 FCC Rcd 21866, 21871-76 (2002).

²⁰ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 1.903(a), 1.947(a), 74.532(e).

the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.²¹ 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.

15. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Media Logic LLC, at its address of record, and John C. Trent, its counsel of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

²¹ 47 U.S.C. § 504(a).