

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

In the Matter of)	
)	File No: EB-08-MA-0188
LSM Radio Partners, L.L.C.)	Facility ID No. 34355
)	NAL/Acct. No.: 200932600001
Licensee of Station WWWK(FM))	FRN: 0010245207
Islamorada, Florida)	
)	
)	

ORDER ON RECONSIDERATION

Adopted: October 20, 2011

Released: October 21, 2011

By the Chief, Enforcement Bureau:

1. In this Order on Reconsideration (“Order”), we grant in part and deny in part a petition for reconsideration (“*Petition*”) filed on September 2, 2010 by LSM Radio Partners, L.L.C. (“LSM Radio”), licensee of Station WWWK(FM), in Islamorada, Florida.¹ As discussed below, we conclude that the forfeiture should be reduced to four thousand seven hundred dollars (\$4,700).

2. LSM Radio seeks reconsideration of a *Forfeiture Order* issued on August 4, 2010,² which imposed an eight thousand five hundred dollar (\$8,500) monetary forfeiture for the willful and repeated violation of sections 11.35(a) and 73.1125(a) of the Commission’s rules (“Rules”).³ The noted violations concerned LSM Radio’s failure to maintain: (1) an operational Emergency Alert System (“EAS”) equipment when Station WWWK(FM) was in operation; and (2) a full-time managerial and staff presence at the station’s main studio consistent with the Rules. The originally proposed forfeiture of \$15,000 was reduced to \$8,500 based upon LSM Radio’s inability to pay the \$15,000 forfeiture as documented by its tax returns for several years.⁴ LSM Radio, in its *Petition*, asks that we reconsider our decision, urging cancellation of the forfeiture altogether because, it asserts, that it simply “does not have the money to pay the forfeiture amount.”⁵

3. With regard to an individual’s or entity’s inability to pay, the Commission has determined that, in general, gross revenues are the best indicator of an ability to pay a forfeiture.⁶ Based on the updated financial documents and other information provided by LSM Radio, we find insufficient basis to grant its request for cancellation of the forfeiture. In this regard, the forfeiture amount does not

¹ See *Petition for Reconsideration of Forfeiture Order* filed by David G. O’Neil, Esq., dated September 2, 2010 (“*Petition*”). See also *Supplement to Petition for Reconsideration of Forfeiture Order* filed by David G. O’Neil, Esq., dated April 21, 2011 (providing additional financial information).

² See *LSM Radio Partners, L.L.C.*, *Forfeiture Order*, 25 FCC Rcd 10631 (Enf. Bur. 2010) (“*Forfeiture Order*”).

³ See 47 C.F.R. §§ 11.35(a), 73.1125(a).

⁴ See *Forfeiture Order*, 25 FCC Rcd at 10634.

⁵ *Petition* at 2.

⁶ See *PJB Communications of Virginia, Inc.*, *Memorandum Opinion and Order*, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator’s gross revenues); *Local Long Distance, Inc.*, *Order of Forfeiture*, 15 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator’s gross revenues); *Hoosier Broadcasting Corporation*, *Memorandum Opinion and Order*, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator’s gross revenues).

exceed or even approach LSM Radio's gross revenues.⁷ We do, however, find a sufficient basis to further reduce the \$8,500 forfeiture based on the financial documents and other materials it submitted and, therefore, reduce the forfeiture to \$4,700.⁸

4. Accordingly, **IT IS ORDERED**, pursuant to section 405 of the Communications Act of 1934, as amended (the "Act"),⁹ and section 1.106 of the Commission's rules,¹⁰ that the Petition for Reconsideration filed by LSM Radio Partners, L.L.C. **IS GRANTED IN PART** and **DENIED IN PART** and the forfeiture is reduced to four thousand seven hundred dollars (\$4,700).

5. 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 enforcement pursuant to section 504(a) of the Act.¹¹ 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 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 with any questions regarding payment procedures at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. LSM Radio shall also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

6. **IT IS FURTHER ORDERED** that this Order shall be sent by both regular mail and by certified mail, return receipt requested, to LSM Radio Partners, L.L.C. at 70 Walnut St., Wellesley, MA 02481 and to its counsel, David G. O'Neil, Esq., Rini Coran PC, 1140 19th Street NW, Suite 600, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

⁷ See *Lancaster Educational Broadcasting Foundation*, Forfeiture Order, 24 FCC Rcd 9013, 9015 (Enf. Bur. Investigations & Hearings Div. 2009) (denying request for cancellation of proposed forfeiture based on inability to pay claim because licensee's gross revenues exceeded proposed forfeiture amount).

⁸ This forfeiture amount falls within the percentage range that our precedents have found acceptable. See *supra* note 6. If LSM Radio believes that paying this amount still presents financial difficulties, we note that it could always pursue an installment payment plan to lessen the immediate impact of the forfeiture.

⁹ See 47 U.S.C. § 405.

¹⁰ See 47 C.F.R. § 1.106.

¹¹ See 47 U.S.C. § 504(a).