

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

In the Matter of	)	
	)	
Pittman Broadcasting Services, LLC	)	File No.: EB-FIELDSCR-12-00002104
	)	NAL/Acct. No.: 201332620002
Licensee of Station KVOL-AM	)	FRN: 0004330825
Lafayette, LA	)	Facility ID No.: 9415

**FORFEITURE ORDER**

**Adopted: July 30, 2014**

**Released: July 30, 2014**

By the Regional Director, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. We impose a penalty of \$14,000 against Pittman Broadcasting Services, LLC (Pittman) for failing to maintain operational Emergency Alert System (EAS) equipment and logs and operate its station within authorized power limits. Pittman does not dispute the violations, but requests a forfeiture reduction based on a purported inability to pay. Based on the financial documentation provided by Pittman, however, we find insufficient basis to reduce the forfeiture and deny Pittman's request.

2. Specifically, we issue a monetary forfeiture to Pittman, licensee of Station KVOL-AM in Lafayette, Louisiana (Station), for willful and repeated violation of Sections 11.35(a) and 73.1745(a) of the Commission's rules (Rules).<sup>1</sup>

**II. BACKGROUND**

3. On May 30, 2013, the Enforcement Bureau's New Orleans Office (New Orleans Office) issued a Notice of Apparent Liability for Forfeiture and Order (*NAL*) to Pittman proposing a \$14,000 forfeiture against it for failing to maintain operational EAS equipment and operating its Station with more than authorized power.<sup>2</sup> In its *NAL Response*, Pittman stated that the Station had come into compliance with the Rules and requested a reduction of the proposed forfeiture.<sup>3</sup> In support of its request for reduction

<sup>1</sup> 47 C.F.R. §§ 11.35(a), 73.1745(a).

<sup>2</sup> *Pittman Broadcasting Services, LLC*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 7980 (Enf. Bur. 2013). A comprehensive recitation of the facts and history of this case can be found in the *NAL* and is incorporated herein by reference.

<sup>3</sup> Letter from Dan J. Alpert, Counsel for Pittman Broadcasting Services, LLC, to Deputy Regional Director, South Central Region, Enforcement Bureau at 1–2 (July 1, 2013) (on file in EB-FIELDSCR-12-00002104) (*NAL Response*). Although this letter was labeled a "Petition for Reconsideration," we are treating it as a response to the *NAL* because the *NAL* was not a final Enforcement Bureau decision, but rather a notice of apparent liability for forfeiture. See 47 C.F.R. § 1.106 (stating that an aggrieved party may file a Petition for Reconsideration of "final actions taken pursuant to delegated authority . . ."). Moreover, we note that the *NAL Response* was due within 30 calendar days from release of the *NAL* (by June 28, 2013), but was received by the New Orleans Office on or after July 3, 2013. *NAL*, 28 FCC Rcd at 7983–84, para. 12. See 47 C.F.R. § 1.80(f)(3) (stating that a party will be afforded a reasonable period of time, usually 30 days, to show in writing why a forfeiture should not be imposed or should be reduced). However, in light of the inability to pay issue raised by Pittman, we exercise our discretion to address the arguments made in the *NAL Response*.

of the proposed forfeiture, Pittman asserts that it operated at a net loss in 2009 and 2010, had minimal net income in 2011, and is unable to pay the forfeiture.<sup>4</sup>

### III. DISCUSSION

4. As Pittman does not deny any of the facts stated in the *NAL*, we affirm the *NAL*'s findings and conclude that Pittman willfully and repeatedly violated Sections 11.35(a) and 73.1745(a) of the Rules by failing to maintain operational EAS equipment and operate its station within authorized power limitations.

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),<sup>5</sup> Section 1.80 of the Rules,<sup>6</sup> and the *Forfeiture Policy Statement*.<sup>7</sup> In examining Pittman's *NAL Response*, Section 503(b)(2)(E) 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.<sup>8</sup> As discussed below, we have considered Pittman's *NAL Response* in light of these statutory factors and find that a reduction of the forfeiture is unwarranted.

6. In response to the *NAL*, Pittman certified that it repaired its EAS equipment to generate the required logs and fixed its transmission switching equipment to operate within authorized power limits.<sup>9</sup> In addition, Pittman requested reduction of the \$14,000 forfeiture based on an alleged inability to pay.<sup>10</sup> Although Pittman acknowledged that the Commission generally has found that gross revenues are the best indicator of an entity's ability to pay a forfeiture and cited cases which granted reductions based on the entity's gross revenues, it nevertheless requested a forfeiture reduction based on Pittman's net revenues.<sup>11</sup> We find no reason to depart from our longstanding precedent and consider anything other than Pittman's gross revenues when determining its ability to pay a forfeiture.<sup>12</sup> Based on the financial documents provided by Pittman, we find insufficient basis to reduce the forfeiture due to an inability to pay.<sup>13</sup>

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<sup>4</sup> *NAL Response* at 2.

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</sup> *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*).

<sup>8</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>9</sup> See Statement of Marcus Pittman, III, Managing Member of Pittman Broadcasting Services, LLC (July 1, 2013) (on file in EB-FIELDSCR-12-00002104).

<sup>10</sup> *NAL Response* at 2.

<sup>11</sup> *Id.* at 1–2.

<sup>12</sup> See, e.g., *Local Long Distance, Inc.*, Forfeiture Order, 16 FCC Rcd 24385 (Enf. Bur. 2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broad. Corp.*, Forfeiture Order, 15 FCC Rcd 8640 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

<sup>13</sup> The proposed \$14,000 forfeiture amount falls within the percentage range that the Commission has previously found acceptable. See *supra* note 12. If Pittman still believes paying this amount presents financial difficulties, we note that it could always request an installment payment plan to lessen the immediate impact of the forfeiture. See *infra* para. 9.

#### IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Rules, Pittman Broadcasting Services, LLC **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of fourteen thousand dollars (\$14,000) for violations of Sections 11.35(a) and 73.1745(a) of the Rules.<sup>14</sup>

8. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.<sup>15</sup> If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.<sup>16</sup> Pittman Broadcasting Services, LLC shall send electronic notification of payment to SCR-Response@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>17</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

9. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>18</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

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<sup>14</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 11.35(a), 73.1745(a).

<sup>15</sup> 47 C.F.R. § 1.80.

<sup>16</sup> 47 U.S.C. § 504(a).

<sup>17</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>18</sup> See 47 C.F.R. § 1.1914.

10. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to Pittman Broadcasting Services, LLC at 307 S. Jefferson Avenue, Covington, LA 70433, and to its counsel, Dan. J. Alpert, at 2120 N 21<sup>st</sup> Rd., Arlington, VA 22201.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton  
Regional Director, South Central Region  
Enforcement Bureau