

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

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| In the Matter of |) | |
| |) | |
| Pittman Broadcasting Services, LLC |) | File No.: EB-FIELDSCR-13-00008204 ¹ |
| |) | NAL/Acct. No.: 201332620003 |
| Licensee of Station WUUU-FM and |) | FRN: 0004330825 |
| Owner of Antenna Structure No. 1064240 |) | Facility ID No.: 22992 |
| Franklinton, Louisiana |) | |

MEMORANDUM OPINION AND ORDER

Adopted: December 18, 2014

Released: December 18, 2014

By the Deputy Chief, Enforcement Bureau:

I. INTRODUCTION

1. We grant in part and deny in part the Petition for Reconsideration (*Petition*) filed by Pittman Broadcasting Services, LLC (Pittman). Pittman seeks reconsideration of a *Forfeiture Order* issued by the Enforcement Bureau imposing a \$22,500 penalty against it for failing to: (1) maintain operational Emergency Alert System equipment and logs; (2) clean or repaint its antenna structure as often as necessary to maintain good visibility; and (3) exhibit required antenna structure lighting. Pittman does not dispute the violations, but requests that the Commission reduce the forfeiture amount based on updated financial information demonstrating an inability to pay. While we affirm the Enforcement Bureau's findings of violation, we reduce the forfeiture imposed to \$6,000 in light of the new financial documentation submitted by Pittman.

II. BACKGROUND

2. On July 30, 2014, the Enforcement Bureau issued a *Forfeiture Order*² imposing a \$22,500 penalty against Pittman for willfully and repeatedly violating Section 303(q) of the Communications Act of 1934, as amended (Act), and Sections 11.35(a)–(b), 17.50, and 17.51(a) of the Commission's rules (Rules).³ As discussed in the *Forfeiture Order*, Pittman never denied the violations and originally failed to submit sufficient financial documentation indicating an inability to pay the forfeiture.⁴ In its *Petition*,⁵ Pittman again requests a reduction of the forfeiture and provides financial information for 2012–2014 for the first time in support of its inability to pay claim.⁶ Pittman asserts that over the past three years it “has had very limited gross revenues” and experienced a net revenue loss.⁷

¹ This investigation was initiated under File No. EB-FIELDSCR-12-00002372 and subsequently assigned File No. EB-FIELDSCR-13-00008204. Any future correspondence with the Commission concerning this matter should reflect the new case number.

² *Pittman Broadcasting Services, LLC*, Forfeiture Order, 29 FCC Rcd 9264 (Enf. Bur. 2014) (*Forfeiture Order*), *aff'g*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 7986 (Enf. Bur. 2013).

³ 47 U.S.C. § 303(q); 47 C.F.R. §§ 11.35(a)–(b), 17.50, 17.51(a).

⁴ *Forfeiture Order*, 29 FCC Rcd at 9265–66, paras. 4–7.

⁵ See Letter from Dan J. Alpert, Counsel for Pittman Broadcasting Services, LLC, to Federal Communications Commission (rec. Aug. 29, 2014) (*Petition*) (on file in EB-FIELDSCR-13-00008204).

⁶ *Petition* at 2–3, Attachment 1.

⁷ *Petition* at 2.

III. DISCUSSION

3. Petitions for reconsideration are granted only in limited circumstances. Reconsideration is appropriate only where the petitioner demonstrates a material error or omission in the underlying order, raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters, or the Commission determines that consideration of the facts is required in the public interest.⁸ While a petition for reconsideration that simply reiterates arguments previously considered and rejected will be denied,⁹ we determine that consideration of the new financial information provided by Pittman in its *Petition* is in the public interest.¹⁰

4. Generally, when faced with claims alleging an inability to pay, the Commission has found that "a licensee's gross revenues are the best indicator of its ability to pay a forfeiture."¹¹ The Commission, citing *PJB Communications*, has also held that "[i]f gross revenues are sufficiently great . . . the mere fact that a business is operating at a loss does not itself mean that it cannot afford to pay a forfeiture."¹² Such is the case here and we decline to cancel the forfeiture imposed on Pittman. However, a review of the updated financial information provided by Pittman in its *Petition* convinces us that a reduction of the forfeiture is warranted.¹³ Accordingly, we grant Pittman's *Petition* in part and reduce the forfeiture to \$6,000 on the basis of inability to pay.

IV. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED**, pursuant to Section 405 of the Act and Section 1.106 of the Rules,¹⁴ that the Petition for Reconsideration filed by Pittman Broadcasting Services, LLC **IS GRANTED IN PART AND DENIED IN PART**.

6. **IT IS ALSO ORDERED** that, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311, and 1.80(f)(4) of the Rules,¹⁵ Pittman Broadcasting Services, LLC **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of six thousand dollars (\$6,000) for violation of Section 303(q) of the Act and Sections 11.35(a)–(b), 17.50, and 17.51(a) of the Rules.¹⁶

⁸ See 47 C.F.R. § 1.106(c); *L.R. Radio Grp.*, Memorandum Opinion and Order, 29 FCC Rcd 455, 456, para. 3.

⁹ *EZ Sacramento, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 18257, 18257, para. 2; 47 C.F.R. § 1.106(p).

¹⁰ See *L.R. Radio Grp.*, 29 FCC Rcd at 456, para. 3 (noting that Section 503(b)(2)(E) of the Act directs the Enforcement Bureau to consider a violator's ability to pay when determining a forfeiture penalty, even when the violator initially did not raise an inability to pay claim in response to a proposed forfeiture).

¹¹ *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, 17106, para. 43 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*) (citing *PJB Commc'ns*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089, para 8 (1992)). See *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 Broad. Corp.*, Memorandum Opinion and Order, 15 FCC Rcd 8640 (Enf. Bur. 2000) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

¹² *Forfeiture Policy Statement*, 12 FCC Rcd at 17106, para. 43 (citing *PJB Commc'ns*, 7 FCC Rcd at 2089, para 8).

¹³ This forfeiture amount falls within the percentage range that our precedents have found acceptable. See *supra* note 10. If Pittman still believes paying this amount presents financial difficulties, we note that it could always pursue an installment payment plan to lessen the immediate impact of the forfeiture. See *infra* para. 9.

¹⁴ 47 U.S.C. § 405; 47 C.F.R. § 1.106.

¹⁵ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁶ 47 U.S.C. §§ 303(q); 47 C.F.R. §§ 11.35(a)–(b), 17.50, 17.51(a).

7. 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 Memorandum Opinion and Order.¹⁷ 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.¹⁸ Pittman Broadcasting Services, LLC shall send electronic notification of payment to SCR-Response@fcc.gov on the date said payment is made.

8. 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.¹⁹ 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. 20554.²⁰ 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.

¹⁷ 47 C.F.R. § 1.80.

¹⁸ 47 U.S.C. § 504(a).

¹⁹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁰ See 47 C.F.R. § 1.1914.

10. **IT IS FURTHER ORDERED** that this Memorandum Opinion and Order shall be sent by both First Class Mail 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 21st Rd., Arlington, VA 22201.

FEDERAL COMMUNICATIONS COMMISSION

William Davenport
Deputy Chief
Enforcement Bureau