

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

In the Matter of)	
)	
Alpha Ambulance, Inc.)	File No. EB-02-SJ-031
)	NAL/Acct. No. 200232680007
San Juan, Puerto Rico)	FRN 0005-9491-93

ORDER

Adopted: February 3, 2004

Released: February 5, 2004

By the Commission:

I. INTRODUCTION

1. By this *Order*, we deny the application for review filed on June 13, 2003 and supplemented on June 16, 2003 by Alpha Ambulance, Inc. (“Alpha”) of the *Memorandum Opinion and Order* (“*MO&O*”),¹ issued by the Enforcement Bureau (“Bureau”) on May 14, 2003. In that *MO&O*, the Bureau denied the petition for reconsideration of the *Forfeiture Order*,² which assessed a ten thousand dollar (\$10,000) forfeiture against Alpha for operating radio transmission equipment without Commission authorization in willful violation of Section 301 of the Communications Act of 1934, as amended (the “Act”),³ and Section 1.903(a) of the Commission’s Rules (the “Rules”).⁴

II. BACKGROUND

2. In May of 2002, the Commission’s San Juan, Puerto Rico Office (“San Juan Office”), responded to an interference complaint from the Commonwealth of Puerto Rico Medical Emergency Services (the “Commonwealth”). Using direction finding techniques, the San Juan Office determined that Alpha was transmitting on the Commonwealth’s assigned frequencies and interfering with the Commonwealth’s emergency medical communications. After interviewing Alpha’s principals, the San Juan Office issued Alpha a *Notice of Apparent Liability* (“*NAL*”), finding that Alpha had operated radio transmitting equipment without Commission authorization for approximately three years and proposing a forfeiture in the amount of \$10,000.

3. In its response, Alpha did not dispute the findings of the *NAL*. However, Alpha claimed an inability to pay, and sought a substantial reduction in, the proposed forfeiture amount. In support, Alpha submitted its 1999, 2000 and 2001 tax returns. In the petition for reconsideration of the *Forfeiture Order* and in the instant application for review of the *MO&O*, Alpha reiterated its claim and

¹ *Alpha Ambulance, Inc.*, 18 FCC Rcd 9689 (Enf. Bur. 2003) (“*MO&O*”).

² *Alpha Ambulance, Inc.*, 17 FCC Rcd 26105 (Enf. Bur. 2002) (“*Forfeiture Order*”).

³ 47 U.S.C. § 301.

⁴ 47 C.F.R. § 1.903(a).

supplemented its tax returns with a letter from its accountant.⁵ Finally, Alpha described itself as a “small ambulance company with 13 employees and six ambulances,”⁶ that experienced financial decline,⁷ and that “lacked intent to operate without a license.”⁸

III. DISCUSSION

4. In *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, the Commission adopted guidelines for assessing base forfeiture amounts for violations of the Act and the Commission’s rules, and “retain[ed] the discretion to take action in specific cases as warranted.”⁹ The forfeiture guidelines establish a \$10,000 base forfeiture for operation of unauthorized transmissions.¹⁰ In assessing the forfeiture, the Commission may adjust the base forfeiture by taking into account, *inter alia*, a violator’s ability to pay and other such matters as justice may require.¹¹ It is in this context, that we consider Alpha’s application for review.

5. In analyzing economic-hardship claims, as the *Forfeiture Order* explains,¹² the Commission generally looks to companies’ gross revenues as reasonable and appropriate yardsticks to determine their ability to pay assessed forfeitures.¹³ Indeed, the Commission stated that if companies’ gross revenues are sufficiently large, the fact that net losses are reported, alone, does not necessarily signify inability to pay.¹⁴

6. In the instant case, we have carefully and independently reviewed Alpha’s submissions. We find that Alpha’s tax returns for 1999, 2000 and 2001 reflect steadily increasing and sufficiently large gross revenues, and that its gross revenues effectively negate the financial hardship claim. Specifically, we find that the \$10,000 forfeiture is not excessive under Commission precedent.¹⁵ We further find that

⁵ See Letter from CPA, CFE, MBA Ramon Quinones Rodriguez to David Solomon, Chief, Enforcement Bureau, Federal Communications Commission (January 22, 2003) (“Rodriguez Letter”); see also note 17 and accompanying text, *infra*.

⁶ Application for Review at 1.

⁷ *Id.* at 2.

⁸ *Id.* at 3.

⁹ 12 FCC Rcd 17087, 17093 ¶ 8, *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

¹⁰ *Id.* at 17113.

¹¹ See 47 U.S.C. § 503(b)(2)(D); 47 C.F.R. § 1.80(b)(4).

¹² 17 FCC Rcd at 26107, ¶ 9.

¹³ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089, ¶ 8 (1992); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17106-07, ¶ 43.

¹⁴ See, e.g., *Local Long Distance, Inc.*, 15 FCC Rcd 24385 (2000), *recon. denied*, 16 FCC Rcd 10023, 10025, ¶ 6 (2001); *Independent Communications, Inc.*, 14 FCC Rcd 9605 (1999), *recon. denied*, 15 FCC Rcd 16060, 16060, ¶ 2 (2000); *Hoosier Broadcasting Corp.*, 14 FCC Rcd 3356 (CIB 1999), *recon. denied*, 15 FCC Rcd 8640, 8641, ¶ 7 (Enf. Bur. 2000).

¹⁵ See *PJB Communications*, 7 FCC Rcd at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator’s gross revenues); *Local Long Distance, Inc.*, 16 FCC Rcd at 10025 (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator’s gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator’s gross revenues). In this case, the forfeiture represents a smaller percentage than those issued in the *Local Long Distance, Inc.*, and *Hoosier Broadcasting Corp.*, cases, and only a nominally higher percentage compared to the forfeiture issued in *PJB Communications of Virginia, Inc.*

Alpha has not substantiated its claim¹⁶ that payment of the \$10,000 forfeiture could adversely affect its continued “excellent and well need[ed] . . . service to the public” and its employees’ “well be[ing].”¹⁷ We thus are not persuaded by Alpha’s financial hardship claim, and we agree with the Bureau that there is no basis to reduce the assessed forfeiture amount.¹⁸

7. We also do not find that Alpha’s professed “lack of intent” excuses, lessens, or mitigates its violation. Section 503(b)(1)(B) provides that any person who “willfully or repeatedly” fails to comply with any provision of the Act or any rule, regulation or order issued by the Commission under the Act “shall be liable to the United States for a forfeiture penalty.”¹⁹ In this context, “willful” simply means the conscious and deliberate commission or omission of an act, irrespective of any intent to violate statutory or regulatory requirements.²⁰ In the instant case, it is undisputed that Alpha consciously and deliberately operated transmission equipment without Commission authorization for a three-year period, and that its operations ultimately interfered with the Commonwealth’s authorized and vital emergency medical communications. By so acting, Alpha willfully violated Section 301 of the Act and Section 1.903(a) of the Commission’s implementing rules. We thus find no basis to reduce the assessed forfeiture amount.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 5(c)(4) of the Act²¹ and Section 1.115(g) of the Rules,²² the Application for Review filed by Alpha Ambulance, Inc. of the Enforcement Bureau’s May 14, 2003 *Memorandum Opinion and Order* for NAL No. 200232680007 **IS** hereby **DENIED**.

9. 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 collection pursuant to Section 504(a) of the Act.²³ Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232680007 and FRN 0005-9491-93. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.²⁴

¹⁶ See, e.g., *PJB Communications of Virginia, Inc.*, 7 FCC Rcd at 2089, ¶ 8.

¹⁷ Rodriguez Letter at 1.

¹⁸ As set forth in the *Forfeiture Order and the MO&O* and note 24 and accompanying text, *infra*, Alpha may request full payment under an installment plan.

¹⁹ 47 C.F.R. § 503(b)(1)(B).

²⁰ See 47 U.S.C. § 312(f); see also *Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4387-88, ¶ 5 (1991); *Hoosier Broadcasting Corp.*, 15 FCC Rcd at 8641, ¶ 6.

²¹ 47 U.S.C. § 155(c)(4).

²² 47 C.F.R. § 1.115(g).

²³ 47 U.S.C. § 504(a).

²⁴ See 47 C.F.R. § 1.1914.

10. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Lewis H. Goldman, Esq., counsel for Alpha Ambulance, Inc., at 45 Dudley Court, Bethesda, Maryland 20814.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary