

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

In the Matter of)	File No. EB-02-SJ-050
)	
Radio X Broadcasting Corporation)	NAL/Acct. No. 200232680008
Bayamon, Puerto Rico)	FRN 0003762150

MEMORANDUM OPINION AND ORDER

Adopted: October 10, 2006

Released: October 17, 2006

By the Commission:

I. INTRODUCTION

1. By this *Memorandum Opinion and Order* (“*Order*”), we deny the Application for Review,¹ filed on October 26, 2004 by Radio X Broadcasting Corporation (“Radio X”), licensee of FM Broadcast Station WXLX, Lajas, Puerto Rico, and owner of antenna structure number 1043256, Cabo Rojo, Puerto Rico, of the Enforcement Bureau’s (“Bureau”) *Memorandum Opinion and Order* (“*Bureau Order*”), released September 28, 2004.² In affirming willful violations of Sections 17.50 and 73.3526(b) of the Commission’s Rules (“Rules”),³ the *Bureau Order* granted in part and denied in part Radio X’s Petition for Reconsideration⁴ of a Bureau *Forfeiture Order*,⁵ and reduced the monetary forfeiture from twenty thousand dollars (\$20,000) to sixteen thousand dollars (\$16,000). The noted violations involved Radio X’s failure to clean or repaint its antenna structure to maintain good visibility and its failure to maintain Station WXLX’s public inspection file at the main studio.

II. BACKGROUND

2. On September 5, 2002, the San Juan, Puerto Rico Field Office (“Field Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Radio X in the amount of \$20,000 for the antenna structure and public inspection file violations observed during an August 21, 2002 inspection by Commission agents (“agents”) from the Field Office.⁶ At the time of the inspection, the agents observed that the aviation orange and white paint for Radio X’s tower was extremely faded and chipped, thereby

¹ Application for Review (filed October 26, 2004).

² *Radio X Broadcasting Corporation*, 19 FCC Rcd 18690 (Enf. Bur. 2004) (“*Bureau Order*”).

³ 47 C.F.R. §§ 17.50 and 73.3526(b).

⁴ Petition for Reconsideration (filed December 10, 2003).

⁵ *Radio X Broadcasting Corporation*, 18 FCC Rcd 23201 (Enf. Bur. 2003) (“*Forfeiture Order*”).

⁶ *Notice of Apparent Liability for Forfeiture*, NAL Acct. No. 200232680008 (Enf. Bur., San Juan Office, released September 5, 2002) (“NAL”).

reducing the visibility of the antenna structure,⁷ and that when inspecting WXLX's main studio, the public inspection file was not available for inspection.⁸

3. On September 19, 2002, Radio X submitted a response to the *NAL* ("Response") which accepted the findings of the Field Office regarding both the condition of the antenna structure and the location of the public inspection file. Radio X also requested a substantial reduction or cancellation of the forfeiture based on the immediate measures it took to correct the violations noted in the *NAL* and due to an inability to pay claim. On November 10, 2003, a *Forfeiture Order* was released, wherein Radio X's request was denied by the Bureau. In the *Forfeiture Order*, the Bureau noted that the Commission has repeatedly stated that remedial actions taken to correct a violation are *not* mitigating factors warranting reduction of a forfeiture.⁹ Additionally, based on Radio X's Response that "all payments" during 2001 and 2000 were made by its parent company,¹⁰ the *Forfeiture Order* noted that the parent company's ability to pay was relevant in evaluating the subsidiary company's ability to pay the forfeiture.¹¹ Because Radio X had not provided sufficient information from which the Bureau could evaluate the financial condition of its parent company, Radio X's inability to pay claim was denied. In issuing the \$20,000 forfeiture, the *Forfeiture Order* concluded that Radio X willfully violated Sections 17.50 and 73.3526(b) of the Rules and that neither cancellation nor reduction of the proposed monetary forfeiture was warranted.

4. In its December 10, 2003 Petition for Reconsideration of the *Forfeiture Order*, Radio X asserted that the Bureau failed to provide analysis of the mitigating factors that it presented;¹² that the determination as to when a tower requires repainting is "purely subjective" with no "bright line test" and is "unconstitutionally vague and unenforceable on its face as applied"; that its case is "akin to that of *Access. I*"¹³ where a tower forfeiture was reduced due to good faith and a history of overall compliance; that it should receive a reduction because the violation did not reflect egregious misconduct and was neither willful nor intentional and resulted in no substantial harm; that it has a history of compliance; and that its inability to pay claim should be upheld as its parent company *voluntarily* made payments on its behalf and was not *required* to do so. The Bureau found all but one of these arguments to be without merit. Finding that Radio X did possess a history of compliance the *Bureau Order* reduced the \$20,000 forfeiture amount to \$16,000 and denied the Petition for Reconsideration in all other respects.

5. In its Application for Review, Radio X merely reiterates, *largely verbatim*, past arguments raised in its Petition for Reconsideration. We find that these arguments were fully and correctly addressed by the *Bureau Order* except to the extent that we take the opportunity to further elaborate on issues raised.

⁷ The Commission's antenna structure registration database indicates that the tower is required to be painted.

⁸ *NAL* at 1. The operator on duty during the inspection stated that the subject file was kept at the station owner's office in Bayamon, Puerto Rico, which is over 100 miles from the city of license.

⁹ *Forfeiture Order* at 23201 (citing *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002) ("*AT&T Wireless*"); *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994) ("*Seawest Yacht Brokers*"); *Station KGVV, Inc.*, 42 FCC 2d 258, 259 (1973) ("*KGVV*").

¹⁰ Response attachment, "Radio X Broadcasting Corporation Financial Statements December 2001 and 2000."

¹¹ *Forfeiture Order* at 23203.

¹² *But see* ¶ 3.

¹³ *Access. I Communications Corp.-NY*, 18 FCC Rcd 22289 (Enf. Bur. 2003) ("*Access. I*").

III. DISCUSSION

A. Tower Painting Violation

1. Background.

6. Section 303(q) of the Communications Act of 1934, as amended (“Act”) grants the Commission authority to oversee antenna structure painting requirements.¹⁴ Section 303(q) of the Act is codified in Part 17 of the Rules. Section 17.50 of the Rules states that antenna structures requiring painting must be cleaned or repainted as often as necessary to maintain good visibility. The Commission has consistently stressed the importance of compliance with antenna structure rules in light of air safety concerns.¹⁵ Moreover, the Commission routinely gives its field agents deference concerning whether an entity violates these Rules.¹⁶

2. Discussion.

7. As an initial matter, we note that in its Response to the *NAL*, Radio X – by way of Robert Davila, its President – accepted all the findings of the Field Office pertaining to the tower painting Rule violation.¹⁷ However, in subsequent pleadings Radio X challenged those determinations.

8. In its Application for Review, Radio X again contends that the tower painting requirements found in Section 17.50 of the Rules are “overly vague, completely subjective, and it is unreasonable to assess a forfeiture in this instance without prior notice. . . .”¹⁸ It further suggests that before issuing an *NAL* the Field Office should advise a tower owner of its need to repaint. In addition to the Bureau’s previous response to these arguments,¹⁹ we emphasize that the tower painting specifications are found in Section 17.23 of the Rules.²⁰ That Rule amplifies the general requirements of Section 17.50 of the Rules. According to Section 17.23 of the Rules, antenna structures “must” conform to the painting requirements referenced in the Federal Aviation Administration’s (“FAA”) Advisory Circular, entitled “Obstruction Marking and Lighting.”²¹ Thus, the requirements are set forth and the burden is on the tower owner, not the Field Office, to ensure compliance with those requirements.

¹⁴ 47 U.S.C. § 303(q).

¹⁵ See *SpectraSite Communications*, 18 FCC Rcd 22799 (2002) (“*SpectraSite*”) (stressing the importance of compliance with antenna structure rules in light of air safety considerations); see *AT&T Wireless* at 21866 (stressing the importance of compliance with antenna structure rules in light of air safety considerations).

¹⁶ See *Access.1* at 22292 (upholding the field agent’s finding of inadequate visibility, despite the tower owner’s assertion that the tower complied with the Rules); *William L. Needham and Lucille Needham*, 18 FCC Rcd 5521 (Enf. Bur. 2002) (“*Needham*”) (upholding the field agent’s determination that the tower’s painted bands were not clearly visible, despite tower owner’s assertion that it had no difficulty discerning the painted bands and maintained a painting schedule for the tower).

¹⁷ Letter from Roberto Davila, President, Radio X Broadcasting Corporation WXLX-FM, to Enforcement Bureau-Technical & Public Safety Division (now “Spectrum Enforcement Division”) (Sept. 13, 2002).

¹⁸ See Application for Review at 4.

¹⁹ See *Bureau Order* at 18692.

²⁰ 47 C.F.R. § 17.23.

²¹ Radio X’s antenna structure registration requires it to comply with FAA marking guidelines, chapters 3, 4, 5 and 9. The Advisory Circular explains that tower marking:

. . . is done to warn pilots on a potential collision course with a structure of its presence during daylight hours. . . . The chromaticity and luminance standards of aviation orange and white paint should conform to Federal Standard FED-STD-595. . . . However, all outdoor paints deteriorate with

(continued....)

9. Radio X further asserts that the tower did not need to be painted “in order to maintain visibility because it remained visible” and that no tower violation occurred.²² Radio X avers that the tower is located at a “high, extremely visible location and is . . . highly visible to any objective analysis.”²³ Radio X states that the appropriate visibility in this setting is also supported by its assertion that it has received no complaints from general aviation interests or the FAA,²⁴ and that Puerto Rico is a tropical location where there is no fog or other inclement weather that would obscure the visibility of the tower in the daytime.²⁵ We are not persuaded. Tower visibility is a *critical* issue to air safety.²⁶ The Commission’s standards are not modified by the nature of the environment in which the tower is located. Rather, the subject Rules must be enforced, consistent with the requirements of Section 17.50 of the Rules.²⁷ In that regard, the tower must be painted and lit in accordance with its antenna structure registration in order to be considered visible under Section 17.50 of the Rules.

10. Radio X argues again that because it did not find that the tower required repainting in order to maintain visibility, its omission was not “willful.”²⁸ We disagree. The issue of whether the violation was “willful” was previously fully and correctly discussed and rejected. The term “willful,” as defined in Section 312(f)(1) of the Act,²⁹ does not require a finding that Radio X intended to violate the Rule. Rather, the definition requires a finding of a “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.³⁰ Radio X chose to delay repainting the tower until after it was informed by the agent’s inspection of the painting violation. As discussed below, Radio X also seeks good faith credit for its alleged efforts to arrange for the tower’s painting prior to the inspection, albeit not for the purpose of complying with Section 17.50 of the Rules, but to preserve and protect the antenna structure due to the “effects of the tropical sun on the tower paint.”³¹ Yet at the same time, Radio X does not want this very knowledge of the need to repaint the subject tower to be attributed to it on the issue of willful non-compliance with the Commission’s tower painting Rules. (Neither Section 17.50 nor 17.23 of the Rules distinguishes between the *need* to repaint due to fading and the need to repaint due to fading and/or chipping.) Radio X cannot have it both ways. The fact that the tower

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time. While it is not practical to give a maintenance schedule for all climates, surfaces should be repainted whenever the color changes noticeably or its effectiveness is reduced by scaling, oxidation, or chipping. *An orange color tolerance chart is available upon request . . . for determining when repainting is required* (emphasis added).

FAA Paint and Light Advisory Circular, “*FAA Standards for Obstruction Marking and Lighting*,” No. 70/7460-1G at i, 5 (1985).

²² See Application for Review at 5.

²³ *Id.*

²⁴ *Id.* at 5-6.

²⁵ *Id.* at 6.

²⁶ See n.15, *supra*.

²⁷ See *Bureau Order* at 18692; see n.16, *supra*.

²⁸ Application for Review at 7. Radio X argues that “[W]illfulness exists if there is a voluntary act or omission in that a person knew that he was doing the act in question as opposed to the act being accidental.”

²⁹ 47 U.S.C. § 312(f)(1).

³⁰ *Bureau Order* at 18693.

³¹ See Application for Review at 6.

needed painting prior to the inspection – for *whatever* reason at the time of the inspection – demonstrates that the violation was willful.³²

11. Radio X asserts that its prompt action to comply with the Commission’s decision subsequent to the inspection is sufficient for a good faith reduction in the forfeiture amount. As the Bureau previously correctly noted, a forfeiture reduction for good faith efforts is not warranted where the tower owner does not take concrete steps to correct or remedy a violation until after a field inspection.³³ Radio X’s submissions show that it did not take concrete steps to repaint its tower until after the inspection on August 21, 2002, despite its admitted prior knowledge that repainting was warranted. Radio X claims that, prior to the inspection it “was evaluating the alternatives of new paint or strobe lighting”³⁴ and “had solicited bids for each option.”³⁵ Radio X provides no evidence of these efforts. In any event, we find that such efforts are not sufficient to warrant a reduction.³⁶

12. Radio X again argues that the base forfeiture of ten thousand dollars (\$10,000) for each violation was “erroneously asserted.”³⁷ Radio X submits that the base forfeiture amount of \$10,000 applies to a tower that is not painted at all, and that “a subjective determination ... that the paint was so faded and/or chipped so as to reduce visibility is subject to no objective criteria, and is not ... equivalent to a failure to comply with painting and lighting requirements.”³⁸ Radio X states further that the violation is “unconstitutionally vague and unenforceable on its face and as applied.”³⁹ We disagree. Neither the tower painting Rule set forth in Section 17.50 of the Rules, nor the forfeiture amount set forth in Section 1.80(b)(4) of the Rules⁴⁰ distinguishes between a painted or an unpainted antenna structure, and in both

³² See *Cumulus Licensing Corp.*, 19 FCC Rcd 24815 (Enf. Bur. 2004) (antenna structures that were not painted since the 1950’s were found to violate Section 17.50 of the Rules; tower owner only began to assess the condition of the towers after the inspection), *recon. denied*, 21 FCC Rcd 1032 (Enf. Bur. 2006); *Madison Broadcasting*, 17 FCC Rcd 16081 (Enf. Bur. 2002) (tower painting rules require owners to clean and repaint antenna structures as often as necessary to maintain good visibility, and a tower owner which fails to take such steps is in willful violation of these Rules).

³³ See *Sutro Corporation*, 19 FCC Rcd 15274, 15276 (2004) (“*Sutro*”) (Commission affirmed Bureau’s determination that correction of a tower violation after being notified by Commission staff does not warrant mitigation).

³⁴ Application for Review at 6.

³⁵ *Id.*

³⁶ See *AT&T Wireless* at 21870 (remedial action to correct tower painting violation was not a mitigating factor warranting reduction of forfeiture); *Seawest Yacht Brokers* at 6099 (corrective action taken to comply with the Rules is expected, and does not mitigate any prior forfeitures or violations); *TCI Cablevision of Maryland*, 7 FCC Rcd 6013, 6014 (1992) (basing mitigation of a forfeiture upon corrective action taken subsequent to the misconduct upon which liability is based would tend to encourage remedial rather than preventive action) *citing International Broadcast Corp.*, 19 FCC 2d 793, 794 (1969); *KGVL* at 259 (licensees not excused for past violations by reason of subsequent corrective action); *cf. A-O Broadcasting Corporation*, 20 FCC Rcd 756, 761 (2005) (“*A-O Broadcasting*”) (because licensee showed good faith by obtaining EAS equipment and starting constructing a main studio before the inspection, the forfeiture was reduced); *Radio One Licenses, Inc.*, 18 FCC Rcd 15964, 15965 ¶ 4 (2003), *recon. denied*, 18 FCC Rcd 25481 (2003) (reducing a forfeiture from \$9,200 to \$8,000 for EAS violations because the licensee had identified the problems and had ordered replacement equipment *prior* to the Field Office’s on-site inspection).

³⁷ Application for Review at 3.

³⁸ *Id.* at 8.

³⁹ *Id.*

⁴⁰ 47 C.F.R. § 1.80(b)(4) (“*Guidelines for Assessing Forfeitures, Section I Base Amounts for Section 503 Forfeitures*”). The Forfeiture Guidelines established a \$10,000 forfeiture amount for “Failure to comply with prescribed lighting and/or marking.”

cases the base forfeiture amount of \$10,000 is the starting point from which the forfeiture amount is derived. The Commission has explained that forfeiture amounts reflect “the degree of harm or potential for harm that may arise from the violation.”⁴¹ As previously discussed, no tower paint violation is minor.⁴² The Commission has consistently stressed that it expects full compliance with the antenna structure rules because of the potential danger to air navigation.⁴³ The agent’s observations of the tower were consistent with established procedure and he correctly determined, based on his observations and experience, that the antenna structure paint was clearly and obviously chipped and the paint faded: “[T]he tower’s aviation orange and white paint was extremely faded and chipped, reducing the visibility of the structure.”⁴⁴ This finding, which establishes noncompliance with the requirements of Section 17.50 of the Rules, fully supports the forfeiture amount.⁴⁵ The key here is the visibility of the tower per our rules, and not whether it had ever been painted (though an unpainted tower may form the basis for an upward adjustment of the forfeiture amount if such a violation was determined to be egregious or intentional).⁴⁶ Moreover, we disagree with Radio X’s assertion that the determination as to when a tower requires repainting is “purely subjective” and is “unconstitutionally vague and unenforceable on its face as applied.” As previously discussed, Sections 17.50 and 17.23 of the Rules clearly set forth the tower painting requirements for tower owners.

B. Maintain Public Inspection File at Main Studio

1. Background.

13. The main studio and public inspection file rules are rooted in Section 307(b) of the Act⁴⁷ and codified in Part 73 of the Rules. Section 73.3526(b) of the Rules states that the public inspection file must be maintained at the main studio of the station.⁴⁸ The Commission has found that reasonable access to the public inspection file serves the important purpose of facilitating citizen monitoring of a station's

⁴¹ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”); *see, e.g., Bureau Order* at 18693.

⁴² *See Bureau Order* at 18693 *citing to SpectraSite* at 7884 (stressing the importance of full compliance with antenna structure rules).

⁴³ Moreover, Radio X asserts that even if there was a violation in this case, “it was at most a ‘minor’ violation.” Radio X’s argument is misplaced. With regard to tower violations, there are none that are minor. To the extent that this issue was raised earlier, the argument was fully and correctly discussed and rejected. *See Bureau Order* at 18693.

⁴⁴ *See Bureau Order* at 18690.

⁴⁵ To the extent that Radio X avers that the instant case is “akin to *Access.1 Communications*,” the Bureau previously fully and correctly discussed and rejected this argument. *See, e.g., Bureau Order* at 18692. Nor, as Radio X argues, is this case comparable to *Midwest Tower Partners, L.L.C.*, 18 FCC Rcd 12,921 (2003), where a \$10,000 forfeiture was deleted because the Bureau determined that there was no evidence that the cables obstructed the view of the tower. In the instant case, the Bureau, on reconsideration, affirmed its finding that the tower painting did not comply with the Rules.

⁴⁶ *See* 47 C.F.R. § 1.80(b)(4) Note (“*Guidelines for Assessing Forfeitures, Section I – Base Amounts for Forfeitures*”); *see also Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17113-15 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁴⁷ 47 U.S.C. § 307.

⁴⁸ This Rule was modified in 1998 to provide, among other things, more flexibility regarding the location of a radio station’s public inspection files. Licensees were required to provide ready access to those files. *Review of the Commission’s Rules Regarding the Main Studio Rule and Local Public Inspection Files of Broadcast Television and Radio Stations*, 13 FCC Rcd 15691 (1998).

operations and public interest performance, and fostering community involvement with local stations, thus helping to ensure that stations are responsive to the needs and interests of their local communities.⁴⁹

2. Discussion.

14. We again note that in its Response to the Bureau's *NAL*, Radio X – by way of Robert Davila, its President – accepted all the findings of the Field Office pertaining to the public inspection file Rule violation.⁵⁰ Those facts remain undisputed.

15. Radio X concedes to the public inspection file Rule violation. However, Radio X again seeks a reduction in the forfeiture amount because it again claims that no substantial harm was done, the violation was minor and the mistake was made in good faith. These arguments were fully analyzed and rejected in the *Bureau Order*.⁵¹ Radio X argues that “the forfeiture assessed is the same as if there had been no public inspection file at all.”⁵² In addition to the Bureau's previous response to Radio X's arguments concerning the public inspection file Rule violation,⁵³ we note that the instant argument parallels Radio X's logic about the forfeiture amount assessed for the tower painting violation,⁵⁴ and has the same weakness.⁵⁵ Radio X submits that the base forfeiture amount of \$10,000 applies where there is no public inspection file at all, and not where a public inspection file exists but is located in the wrong location.⁵⁶ Neither the public inspection file Rule set forth in Section 73.3526(b) of the Rules nor the forfeiture amount set forth in Section 1.80(b)(4) of the Rules distinguishes between whether a public inspection file exists or whether it is not located in accordance with the Rules.⁵⁷ In both cases, the base forfeiture amount of \$10,000 is the starting point from which the forfeiture amount is derived. We emphasize that Radio X's public inspection file was *not only* absent from its main studio, it was also located *over one hundred miles* from the station's transmitter site and city of license. Thus, a visitor to the main studio could not have examined it, whether or not it existed. As to the nature of the steps Radio X took to cure the subject Rule violation subsequent to the Field Office inspection, we repeat that

⁴⁹ *Id.* at 15700.

⁵⁰ *See* para. 3, *supra*.

⁵¹ *Bureau Order* at 18694.

⁵² Application for Review at 12.

⁵³ *Bureau Order* at 18693.

⁵⁴ *See* para. 12, *supra*.

⁵⁵ *Id.*

⁵⁶ Application for Review at 12.

⁵⁷ *See* 47 C.F.R. § 1.80 (b)(4) Note “*Guidelines for Assessing Forfeitures, Section I – Base Amounts for Forfeitures*” *see also Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17113-15 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (establishes a \$10,000 forfeiture for violations of the public inspection file Rules and the location of those files). *Violation of public inspection file Rules: See EICB-TV*, 19 FCC Rcd 18611, 18611 (Enf. Bur. 2004) (\$10,000 forfeiture for public inspection file missing required items; later reduced by successful showing of inability to pay forfeiture); *Trade Center Management, Inc.*, 19 FCC Rcd 6287 (Enf. Bur. 2004) (\$10,000 forfeiture for failure to maintain public inspection file where many documents required for public inspection file were kept among other files in a cabinet at the main studio; reduced for history of overall compliance), *recon. denied*, 20 FCC Rcd 10884 (Acting Chief, Enf. Bur. 2005); *Public inspection file location violations: FNX Broadcasting, LLC*, 19 FCC Rcd 13205, 13207 (Enf. Bur. 2004) (\$10,000 forfeiture for public inspection file located at corporate office—not main studio; reduced for history of overall compliance); *B&C Kentucky, LLC*, 16 FCC Rcd 9305, 9310 (Video Serv. Div. 2001) (\$10,000 forfeiture for location violation of public inspection file located at library—not main studio).

remedial actions taken to correct a violation after notice by the agency are not mitigating factors warranting the reduction of a forfeiture,⁵⁸ and affirm the Bureau's decision.⁵⁹

A. Inability to Pay

1. Background.

16. In assessing forfeiture amounts, Section 503(b)(2)(D) of the Act and Section 1.80(b)(4) of the Rules,⁶⁰ require that the Commission take into account, among other things, the violator's ability to pay and such other matters as justice may require. A successful claim of inability to pay requires supporting financial documentation.⁶¹

2. Discussion

17. Radio X again asserts that the forfeiture amount should be reduced because of its inability to pay it, and again challenges the Bureau's request for financial statements from its parent company (which it did not submit). Radio X acknowledges that "as a general principle the Commission may look at parent companies as part of the 'totality of circumstances,'" but it believes that "there is in this case no obligation of the parent company to make any payments on behalf of Radio X, and the Commission cannot by its policies create one."⁶² Radio X emphasizes that the parent company *voluntarily chose* to make "all payments" for Radio X during the years 2000 and 2001, and asserts that the parent company was under no *obligation* to do so. Consequently, Radio X argues that the parent company's balance sheets are not relevant as evidence of Radio X's inability to pay the forfeiture amount. We disagree with respect to the relevancy of such information.

18. The Bureau has correctly explained in this matter, and Radio X has acknowledged, that when a violator asserts an inability to pay a forfeiture amount relative to its financial situation, the Commission has the authority to look at the totality of the violator's particular financial circumstances in evaluating that claim.⁶³ In that regard, the Commission has looked to potential sources of income available to a violator when considering a violator's ability to pay a forfeiture.⁶⁴ Moreover, where a violator is a subsidiary, "[t]he parent company's ability to pay . . . is relevant in evaluating the subsidiary company's ability to pay the forfeiture."⁶⁵

⁵⁸ See n.9, *supra*.

⁵⁹ Bureau Order at 18692.

⁶⁰ 47 C.F.R. § 1.80(b)(4).

⁶¹ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 ¶ 8 (1992) ("*PJB Communications*"); see also *Forfeiture Policy Statement* at 17106-07 ¶ 43.

⁶² Application for Review at 13.

⁶³ *Forfeiture Order* at 23203 ¶ 7. See also *Forfeiture Policy Statement* at 17158 ¶ 113 ("As for forfeitures that a licensee believes it cannot afford to pay relative to its financial situation, we must look to the totality of the circumstances surrounding the individual case.").

⁶⁴ See e.g. *A-O Broadcasting* at 761 (financial indicators other than a violator's gross revenues are permitted in determining its ability to pay); *KASA Radio Hogar*, 17 FCC Rcd 6256, 6258-59 (2002) (it is appropriate to consider other income to determine whether the violator, in general "is financially capable of paying a forfeiture, not whether financial data from a limited portion of its operations can sustain a forfeiture").

⁶⁵ See *Forfeiture Policy Statement* at 17158 ¶ 113. See also *ACR Electronics*, 19 FCC Rcd 22293, 22303, n.62 (2004) (in determining a proposed forfeiture amount, the Commission considered parent company revenue in determining the subsidiary's ability to pay a forfeiture), *forfeiture ordered*, FCC 06-37 (rel. Mar. 23, 2006); *Dobson* (continued....)

19. In this case, Radio X is a wholly owned subsidiary of RAAD Broadcasting Corporation.⁶⁶ Radio X submitted financial statements indicating that its parent company made “all payments” for it during 2000 and 2001. In addition, the parent company is apparently obligated on debt incurred to finance Radio X’s operations.⁶⁷ Under these circumstances, we cannot fully evaluate Radio X’s ability to pay the forfeiture, including all of its potential sources of income, without evaluating the financial condition of its parent company. In spite of the relevance of this information, Radio X has refused to submit its parent company’s financial documents, arguing that “there is in this case no obligation of the parent company to make any payments on behalf of Radio X, and the Commission cannot by its policies create one.”⁶⁸ The Commission does not seek, however, to impose any obligation on Radio X’s parent company. It only seeks to evaluate, in light of Radio X’s request for a reduction in the forfeiture due its claimed inability to pay it, the totality of its financial situation, including all of its potential sources of income. In setting an appropriate forfeiture amount, we are guided by Congress’s stated goal of imposing forfeitures that are “sufficiently high to deter violations and constitute a meaningful sanction.”⁶⁹ We note that if a corporation could escape meaningful sanctions for violations of the Communications Act and our rules simply by setting up an undercapitalized subsidiary and funneling money through it to fund its operations, it would be in a position to undermine the remedial purpose of Section 503 of the Act. Therefore, in the absence of financial statements of the parent company, we affirm the Bureau’s conclusion that we do not have sufficient information from which to evaluate Radio X’s claim, and must therefore reject its inability to pay claim.⁷⁰

IV. ORDERING CLAUSES

20. Accordingly, **IT IS ORDERED** that, pursuant to Section 1.115 of the Rules, the Application for Review filed by Radio X Broadcasting Corporation of the Enforcement Bureau’s *Memorandum Opinion and Order* for the NAL/Acct. referenced above **IS DENIED**.

21. **IT IS ALSO ORDERED THAT**, pursuant to Section 503(b) of the Act and Section 1.80(f)(4) of the Rules,⁷¹ Radio X Broadcasting Corporation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$16,000 for willfully violating Sections 17.50 and 73.3526(b) of the Rules.

22. 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.⁷² 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/Acct. No. and FRN No.

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Cellular Systems, Inc. and American Cellular Corporation, FCC 06-48 ¶ 59 (rel. Apr. 18, 2006) (the parent company’s size and revenues considered by the Commission in determining the proposed forfeiture amount for the subsidiaries).

⁶⁶ Ownership Report for Commercial Broadcast Stations, filed by Radio X Broadcasting Co., September 27, 1999 (FCC Form 323); Letter from Roberto Davila Rodriguez, President, RAAD Broadcasting Corp., to Federal Communications Commission (Sept. 27, 2001)(Certification of No Change in Ownership).

⁶⁷ See Application for Review at 14.

⁶⁸ *Id.* at 13.

⁶⁹ S. Rep. No. 580, 95th Cong. 1st Sess. 3 (1978), reprinted in 1978 U.S.C.C.A.N. 109, 111.

⁷⁰ See *A-O Broadcasting* at 762.

⁷¹ 47 C.F.R. §§ 0.111, 0.311, and 1.80(f)(4).

⁷² 47 U.S.C. § 504(a).

referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁷³

23. **IT IS FURTHER ORDERED** that copies of this *Order* shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Radio X Broadcasting Corporation, HC 67 Box 15390, Bayamon, Puerto Rico 00956-9535 and to its counsel, Christopher D. Imlay, Booth, Freret, Imlay & Tepper, P.C., 14356 Cape May Road, Silver Spring, Maryland 20904-6011.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁷³ 47 C.F.R. § 1.1914.