

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
People's Broadcast Network, LLC
Licensee of AM Station WDJZ
Bridgeport, Connecticut
File No.: EB-FIELDNER-13-00006508
NAL/Acct. No.: 201432260001
FRN: 0007650369
Facility ID No.: 8516

FORFEITURE ORDER

Adopted: November 25, 2015

Released: November 25, 2015

By the Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. We impose a penalty of \$10,000 against People's Broadcast Network, LLC (People's Broadcast) for failing to enclose the antenna structures in AM Station WDJZ's three-tower array within effective locked fences or other enclosures. The Commission's antenna structure fencing rules protect the public by limiting access to areas with a high potential for radiofrequency exposure. People's Broadcast does not deny the violations, but requests forfeiture cancellation or reduction based on its efforts after receiving notice of the violations to repair the fences surrounding its antenna structures and its purported inability to pay the penalty. As explained below, post-investigation remedial efforts do not warrant a forfeiture reduction or cancellation and People's Broadcast failed to provide sufficient documentation supporting its inability to pay claim. Consequently, we find no reason to cancel, withdraw, or reduce the forfeiture.

II. BACKGROUND

2. On July 20, 2012, agents from the Enforcement Bureau's Boston Office inspected AM Station WDJZ's three-tower array. The agents observed that the wooden fences surrounding the antenna structures were missing entire sections and there was no fence surrounding the perimeter of the property, allowing unrestricted access to the antenna structures. Later that day, one of the agents informed People's Broadcast's General Manager about the missing fencing and advised the company to make repairs. Over a month later, however, agents re-inspected the tower array and observed that not only did People's Broadcast fail to repair the fencing, but the fencing had deteriorated further with additional missing sections.

3. On March 20, 2014, the Enforcement Bureau issued the NAL proposing a \$10,000 forfeiture against People's Broadcast for apparently willfully and repeatedly violating Section 73.49 of the Commission's rules (Rules) for failing to enclose Station WDJZ's three-tower array within effective

1 See People's Broad. Network, LLC, Notice of Apparent Liability for Forfeiture and Order, 29 FCC Rcd 2937, 2937, para. 2 (2014) (NAL). The NAL includes a more complete discussion of the facts and history of this case and is incorporated herein by reference.

2 Id.

3 Id.

4 Id. at 2937, para. 3.

locked fences or other enclosures.⁵ On April 15, 2014, People's Broadcast filed a response to the *NAL*.⁶ In its *NAL Response*, People's Broadcast makes two arguments as to why the *NAL* should be cancelled or reduced. First, People's Broadcast argues that it fully repaired the deteriorated fences after receiving the *NAL* and is in full compliance with Section 73.49 of the Rules.⁷ Second, People's Broadcast contends that it is experiencing financial hardship and is unable to pay the proposed forfeiture amount.⁸

III. DISCUSSION

4. The Enforcement Bureau proposed a forfeiture in this case in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),⁹ Section 1.80 of the Rules,¹⁰ and the Commission's *Forfeiture Policy Statement*.¹¹ When we assess forfeitures, Section 503(b)(2)(E) requires that we 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 such other matters as justice may require."¹² As discussed below, we have fully considered People's Broadcast's *NAL Response*, but find none of its arguments persuasive and affirm the \$10,000 forfeiture proposed in the *NAL*.

A. People's Broadcast's Post-Investigation Remedial Efforts Do Not Warrant Forfeiture Reduction or Cancellation

5. People's Broadcast does not deny that it failed to enclose Station WDJZ's three-tower array within effective locked fences or other enclosures.¹³ However, People's Broadcast states that it repaired the fences after receiving the *NAL* and currently complies with Section 73.49 of the Rules.¹⁴ While the Commission will generally reduce an assessed forfeiture based on the good faith corrective efforts of a violator, those corrective efforts must be taken *prior* to notification of the violation.¹⁵ As the Commission has repeatedly stated, "corrective action taken to come into compliance with Commission

⁵ *See id.* at 2939, para. 8; 47 C.F.R. § 73.49 ("Antenna structures having radio frequency potential at the base . . . must be enclosed within effective locked fences or other enclosures.").

⁶ *People's Broad. Network, LLC*, Response to Notice of Apparent Liability and Order (Apr. 15, 2014) (on file in EB-FIELDNER-13-00006508) (*NAL Response*).

⁷ *Id.* at 1.

⁸ *Id.* at 2.

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 C.F.R. § 1.80.

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 (1997) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

¹² 47 U.S.C. § 503(b)(2)(E).

¹³ *See NAL Response* at 1 (recognizing that "Commission agents found that portions of the fences around the towers were missing sections, thus allowing unrestricted access to the base of each tower").

¹⁴ *See id.*

¹⁵ *See, e.g., Sutro Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 15274, 15277, para. 10 (2004) (stating that the Commission will generally reduce a forfeiture "based on the good faith corrective efforts of a violator when those corrective efforts were taken prior to Commission notification of the violation"); *Catholic Radio Network of Loveland, Inc.*, Forfeiture Order, 29 FCC Rcd 121, 122–23, para. 5 (Enf. Bur. 2014) ("The Commission will generally reduce an assessed forfeiture based on the good faith corrective efforts of a violator when those corrective efforts were taken *prior* to Commission notification of the violation.") (emphasis in original); *Argos Net, Inc.*, Forfeiture Order, 28 FCC Rcd 1126, 1127, para. 4 (Enf. Bur. 2013) ("[C]orrective action taken after notification or inspection by the Commission does not mitigate the violation . . .").

rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations.”¹⁶ Here, People’s Broadcast only repaired the fences after the Enforcement Bureau notified it that it violated Section 73.49 of the Rules.¹⁷ Such post-investigation remedial efforts do not warrant forfeiture cancellation or reduction.

B. People’s Broadcast Did Not Demonstrate an Inability to Pay the Forfeiture

6. People’s Broadcast asserts that it is unable to pay the proposed forfeiture because “WDJZ’s revenues have been quite small and the station has not been a financial success.”¹⁸ With regard to an entity’s inability to pay claim, the Commission has determined that, in general, gross income or revenues are the best indicator of an ability to pay a forfeiture.¹⁹ When an entity declares that it is unable to pay a proposed forfeiture, the Commission requires it to provide tax returns or other reliable financial documentation that accurately reflects the entity’s current financial status.²⁰ Without these documents, the entity fails to make the required showing of financial hardship.²¹

7. The *NAL* required People’s Broadcast to support any inability to pay claim with: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflected its current financial status.²² Here, People’s Broadcast provided the Enforcement Bureau with documentation of its cash receipts and disbursements from 2013, which demonstrated sufficient gross income to pay the forfeiture.²³ Despite repeated requests from the Enforcement Bureau, People’s Broadcast did not provide any supplemental financial documentation regarding its current financial status. Consequently, People’s Broadcast did not demonstrate an inability to pay the forfeiture and we find no basis to cancel or reduce the \$10,000 penalty proposed in the *NAL*.

¹⁶ See, e.g., *Seawest Yacht Brokers*, Notice of Forfeiture, 9 FCC Rcd 6099, 6099, para. 7 (1994) (citations omitted); *Exec. Broad. Corp.*, 3 FCC 2d 699, 700, para. 6 (1966) (“The fact that prompt corrective action was taken . . . does not excuse the prior violations.”).

¹⁷ *NAL Response* at 1.

¹⁸ *Id.*

¹⁹ 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).

²⁰ See, e.g., *James Lee Gaskey*, Forfeiture Order, 15 FCC Rcd 25309, 25311, para. 12 (Enf. Bur. 1999) (“[A] claim of inability to pay should be supported by tax returns or other financial statements prepared under generally acceptable accounting procedures for the most recent three-year period.”); *Barry A. Stevenson*, Order, 12 FCC Rcd 1976, 1977, para. 5 (Comp. & Inf. Bur. 1997) (three years of reliable financial documentation is required to demonstrate inability to pay); *Timothy Harold Hoffman*, Forfeiture Order, 11 FCC Rcd 17463, 17464, para. 6 (Comp. & Inf. Bur. 1996) (an inability to pay claim fails when the Commission only receives information pertaining to garnishment of wages).

²¹ See, e.g., *Macau Traders, Inc.*, Memorandum Opinion and Order and Forfeiture Order, 13 FCC Rcd 228, 233, para. 11 (Mass Med. Bur. 1998) (finding that a violator was not entitled to a forfeiture reduction when it failed to provide the necessary evidence for evaluating its financial condition or ability to pay).

²² *NAL*, 29 FCC Rcd at 2940–41, para. 14.

²³ See *supra* note 19; Independent Accountants’ Compilation Report (May 15, 2014) (on file in EB-FIELDNER-13-00006508).

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act²⁴ and Section 1.80 of the Rules,²⁵ People's Broadcast Network, LLC **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for willfully and repeatedly violating Section 73.49 of the Rules.

9. 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 of this Forfeiture Order.²⁶ 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.²⁷

10. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. People's Broadcast Network, LLC shall send electronic notification of payment to NER-Response@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁸ When completing the 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 that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with completed Form 159) must be mailed to the 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.

11. 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, SW, Room 1-A625, Washington, DC 20554.²⁹ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

²⁴ 47 U.S.C. § 503(b).

²⁵ 47 C.F.R. § 1.80.

²⁶ *Id.*

²⁷ 47 U.S.C. § 504(a).

²⁸ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁹ *See* 47 C.F.R. § 1.1914.

12. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to People's Broadcast Network, LLC, 211 State Street, Bridgeport, Connecticut 06606, and to Jerrold Miller, Esq., Miller and Neely, P.C., Suite 203, 3750 University Boulevard West, Kensington, Maryland, 20895.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
Regional Director
Northeast Region
Enforcement Bureau