

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

In the Matter of)	
)	
Piedmont Radio Co.)	File No. EB-02-AT-317
Licensee of AM Radio Station WPID, Piedmont,)	
Alabama, and Owner of Unregistered Antenna)	NAL/Acct. No. 200332480006
Structure At or Near Coordinates 33° 55' 45" North)	
Latitude by 085°35' 42" West Longitude, in)	FRN 0007-7794-32
Piedmont, Alabama.)	
Piedmont, Alabama)	

A. MEMORANDUM OPINION AND ORDER

Adopted: April 26, 2004

Released: April 28, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“*Order*”), we grant in part and deny in part the Petition for Reconsideration filed by Piedmont Radio Co. (“Piedmont”), licensee of radio station WPID(AM), Piedmont, Alabama. Piedmont seeks reconsideration of the *Forfeiture Order*¹ in which the Chief, Enforcement Bureau (“Bureau”), found it liable for a monetary forfeiture in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Sections 73.1125(a) and 17.4(a) of the Commission’s Rules (“Rules”).² The noted violations involve Piedmont’s willful and repeated failure to maintain a presence at its main studio during normal business hours and register its antenna structure. For the reasons discussed below, we reduce the forfeiture amount from \$10,000 to \$3,000.

II. BACKGROUND

2. On June 26, 2002, an agent from the Commission’s Atlanta, Georgia Field Office (“Atlanta Office”) attempted to inspect station WPID(AM)’s main studio; however, the agent was unable to gain access to the studio. On July 16 and August 21, 2002, the agent telephoned station WPID(AM) but received no answer. On August 26, 2002, the agent contacted WPID(AM)’s owner, who confirmed that the studio had been unstaffed. On June 26, 2002, the agent also inspected the antenna structure, which did not display an Antenna Structure Registration (“ASR”) number. The agent subsequently checked the ASR data base and determined that the structure was unregistered.

3. On October 15, 2002, the District Director of the Atlanta Office issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”)³ in the amount of ten thousand dollars (\$10,000) to Piedmont for willful and repeated violation of Sections 73.1125(a) and 17.4(a) of the Rules. Having no record of a response, on February 6, 2003, the Bureau released the *Forfeiture Order*, affirming the *NAL*. On March 10, 2003, Piedmont filed a petition for reconsideration of the *Forfeiture Order*. In its petition for reconsideration, Piedmont does not contest the violations, but does challenge the finding that no response was submitted,

¹ *Piedmont Radio Co.*, 18 FCC Rcd 1033 (Enf. Bur. 2003).

² 47 C.F.R. §§ 73.1125(a) and 17.4.

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332480006 (Enf. Bur., Atlanta Office, released October 15, 2002).

presenting evidence that a response was mailed by Certified Mail, Return Receipt Requested and received by the Commission on November 12, 2002.⁴ Piedmont also submits the tax returns for 1999, 2000 and 2001, of its principal in support of its claim of an inability to pay.

III. DISCUSSION

4. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),⁵ Section 1.80 of the Rules,⁶ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines (Forfeiture Policy Statement)*.⁷ In examining Piedmont’s petition, Section 503(b) 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 any such other matters as justice may require.⁸

5. Section 73.1125(a) of the Rules requires a broadcast station to maintain a main studio and a presence at its main studio during normal business hours.⁹ Based on the agent’s observations and Piedmont’s admission that it did not maintain such a presence, we find that Piedmont willfully¹⁰ and repeatedly¹¹ violated Section 73.1125(a) of the Rules.

6. Section 17.4(a) of the Rules provides that the owner of an antenna structure that required notice to the Federal Aviation Administration (“FAA”) must register the antenna structure with the Commission. Piedmont’s antenna structure required FAA notification because it exceeded 200 feet in height.¹² Based upon the agent’s observations, the Commission’s ASR database records and Piedmont’s admission, we find that Piedmont willfully and repeatedly violated Section 17.4(a) of the Commission’s Rules.

⁴ The Bureau has no record of receiving the response. However, the Commission has determined that consideration of a previously unconsidered pleading within a reconsideration proceeding is appropriate where all the allegations are fully reviewed and addressed prior to a determination in the reconsideration. See *California Metro Mobile Communications, Inc*, 17 FCC Rcd 22,974, 22976, ¶ 10 (2002). See also *Eagle Radio, Inc.*, 12 FCC Rcd 5105 ¶ 2 (1997).

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 12 FCC Rcd. 17087 (1997), *recon. denied*, 15 FCC Rcd. 303 (1999).

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ To fulfill the function, a station must equip the main studio with production and transmission facilities that meet applicable standards, maintain continuous program transmission capability, and maintain a meaningful management and staff presence. See *Main Studio and Program Origination Rules*, 3 FCC Rcd 5024 (1988).

¹⁰ Section 312(f) of the Communications Act of 1934, as amended, (“Act”), 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful,’ ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act ...” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹¹ As provided by 47 U.S.C. § 312(f)(2), a continuous violation is “repeated” if it continues for more than one day. The Conference Report for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991).

¹² 47 C.F.R. § 17.7(a).

7. Piedmont does not challenge the Bureau's finding that it violated Sections 73.1125(a) and 17.4(a) of the Rules. Nevertheless, Piedmont seeks cancellation of the forfeiture. In support of its request for cancellation, Piedmont states that it now has full-time main studio staffing during normal business hours and that it has initiated efforts to obtain FAA clearance and to register the tower with the Commission.¹³ No mitigation is warranted on the basis of Piedmont's post *NAL* corrective efforts. As the Commission stated in *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994), "corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations."¹⁴

8. Finally, Piedmont asserts that payment of the forfeiture will be a hardship that will "take bread off the owner's table" and cause the owner's family very great hardship. The Commission has determined that, in general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.¹⁵ We have reviewed the financial information provided, and we find that this information provides a basis for reduction of the forfeiture from the ten thousand dollars (\$10,000) imposed by the *Forfeiture Order* to three thousand dollars (\$3,000) on the basis of Piedmont's inability to pay.

9. We have examined Piedmont's Petition for Reconsideration pursuant to the statutory factors above, and in conjunction with the Commission's *Forfeiture Policy Statement* as well. As a result of our review, we conclude that Piedmont willfully and repeatedly violated Sections 73.1125(a) and 17.4(a) of the Rules and find that, although cancellation of the monetary forfeiture is not warranted, reduction of the forfeiture amount to \$3,000 is appropriate.

10. Because Piedmont has yet to register its tower,¹⁶ we will require, pursuant to Section 308(b) of the Act,¹⁷ that Piedmont report to the Enforcement Bureau within thirty (30) days of the release of this *Order* whether it has achieved compliance with Section 17.4(a) of the Rules. Piedmont's report must be submitted in the form of an affidavit signed by an officer or director of the licensee. If Piedmont fails to submit such a report or we find that Piedmont has not come into compliance with Section 17.51(b), we will consider further appropriate enforcement action.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act¹⁸ and Section 1.106 of the Rules,¹⁹ Piedmont's petition for reconsideration of the February 26, 2003, *Forfeiture Order* **IS GRANTED** to the extent that the monetary forfeiture amount **IS REDUCED** to three thousand dollars (\$3,000) and **IS DENIED** in all other aspects.

12. **IT IS ALSO ORDERED** that, pursuant Section 308(b) of the Act, Piedmont must submit the report described in Paragraph 10, above, within 30 days from the release of this *Order*, to: Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Room 7-A 820, Washington, D.C. 20554, Attention: Peter Waltonen, Esquire.

¹³ As of the adoption date of this *Order*, a search of the Commission's ASR Data Base reveals the tower remains unregistered.

¹⁴ See also *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002).

¹⁵ *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992).

¹⁶ See note 13, *supra*.

¹⁷ 47 U.S.C. § 308(b)

¹⁸ 47 U.S.C. § 405.

¹⁹ 47 C.F.R. § 1.106.

13. 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.²⁰ Payment shall 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 note NAL/Acct. No.200332480006, and FRN 0007–7794–32. 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. 20554²¹

14. **IT IS FURTHER ORDERED THAT** a copy of his *Order* shall be sent by first class mail and certified mail, return receipt requested, to Piedmont Radio Co., P.O. Box 227, Piedmont, Al 36277 and to its counsel, Lewis H. Goldman, Esq., 45 Dudley Court, Bethesda, Maryland 20814.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

²⁰ 37 U.S.C. §504(a).

²¹ 47 C.F.R. § 1.1914.