

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

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| In the Matter of |) | |
| |) | |
| Petracom of Texarkana, L.L.C. |) | File No. EB-03-DL-062 |
| Licensee of FM Radio Station KPGG |) | NAL/Acct. No. 200332500006 |
| Ashdown, Arkansas |) | FRN 0005009881 |

FORFEITURE ORDER

Adopted: April 30, 2004

Released: May 4, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of five thousand four hundred dollars (\$5,400) to Petracom of Texarkana, LLC (“Petracom”), licensee of Station KPGG(FM), Ashdown, Arkansas for failure to install Emergency Alert System (“EAS”) equipment in willful and repeated violation of Section 11.35(a) of the Commission’s Rules (“Rules”).¹

II. BACKGROUND

2. On January 30, 2003, the Commission’s Dallas, Texas Office (“Dallas Office”) conducted an on-site inspection of Station KPGG(FM). The inspection revealed that the station’s EAS equipment had been removed for repairs on October 16, 2003, that the equipment had not been returned to service within sixty days of removal, and that the station had not sought from the Dallas Office an extension of time in which to complete the repairs.² On May 2, 2003, the Dallas Office released a *Notice of Apparent Liability for Forfeiture*, finding that Petracom apparently willfully and repeatedly violated the EAS requirements and assessing an \$8,000 forfeiture against the company.³

3. Pursuant to an extension of time, Petracom filed a response on June 9, 2003.⁴ In its response, Petracom does not dispute the *NAL* findings. However, as discussed below, Petracom seeks cancellation or reduction of the assessed forfeiture amount based upon its remedial efforts, history of compliance, and

¹ 47 C.F.R. § 11.35(a).

² Under Sections 11.35(b) and (c) of the Rules, 47 C.F.R. §§ 11.35(b) and (c), a broadcast station is required to have effective EAS equipment installed, but is permitted to operate for a period of sixty days without defective equipment pending its repair. Beyond the sixty day period, the broadcast station is required to notify the appropriate Field Office that additional time is needed to complete the repairs.

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332500006 (Enf. Bur., Dallas Office, May 2, 2003) (“*NAL*”).

⁴ See Letter from Joseph M. Fry, Vice President and Chief Financial Officer, Petracom of Texarkana, LLC to Joseph Casey, Chief, Enforcement Bureau, Technical and Public Safety Division (June 9, 2003).

inability to pay.

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the 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*.⁷ In examining Petracom's response, Section 503(b) of the Act requires us to 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 other such matters as justice may require.⁸ We will respond to each of Petracom's claims separately below.

5. First, Petracom claims, and the record reflects, that "*prior to the FCC inspection*" it took corrective measures by terminating the chief engineer, who was responsible for ensuring compliance with Commission requirements, by retaining the services of experts, who recommended various corrective measures, and by taking steps to implement the experts' recommendations.⁹ Petracom further claims, and the record reflects, that *after* the inspection, it informed the Dallas Office of its efforts to implement the experts' recommendations and ultimately correct all noted deficiencies.¹⁰

6. Petracom, as the licensee, is accountable for its chief engineer's omissions and ultimately is responsible for compliance with Commission requirements.¹¹ Moreover, had Petracom initiated remedial measures *after* the Commission's inspection, notice or action, such measures, while commendable, would not have been considered a mitigating factor that would have warranted a reduction or cancellation of the assessed forfeiture.¹² However, the record establishes that Petracom voluntarily and on its own accord initiated corrective remedial measures *prior* to the inspection by the Commission's Dallas Office. Under such circumstances, and consistent with precedent,¹³ we find that Petracom's actions present a mitigating

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 Response at 3.

¹⁰ *Id.* at 2.

¹¹ See *Eure Family Limited Partnership*, 17 FCC Rcd 21861, 21864-65 ¶¶ 7-8 (2002); *Sonderling Broadcasting Corp.*, 69 FCC 2d 289, 291 ¶ 6 (1978); *American Paging, Inc.*, 12 FCC Rcd 10417, 10419 ¶ 11 (Enf. Bur. 1997); *Dial-A-Page, Inc.*, 10 FCC Rcd 8825, 8826 ¶ 5 (Enf. Bur. 1995).

¹² See *AM Broadcast Station KTNC and C.R. Communications, Inc.*, DA 99-2960 ¶ 5 (Enf. Bur. 1999); see also *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21861, 21864-75 (2002); *Sonderling Broadcasting Corp.*, 69 FCC 2d 289, 291 (1978); *Odino Joseph*, 18 FCC Rcd 16522, 16524 ¶ 8 (Enf. Bur. 2003); *South Central Communications Corp.*, 18 FCC Rcd 700, 702-03 ¶ 9 (Enf. Bur. 2003); *Northeast Utilities*, 17 FCC Rcd 4115, 4117 ¶ 13 (Enf. Bur. 2002).

¹³ See *Rotijefco, Inc.*, 18 FCC Rcd 14629, 14631 ¶ 7; see also *Max Media of Montana, L.L.C.*, 18 FCC Rcd 21375, 21378 ¶ 11 (Enf. Bur. 2003); *East Tennessee Radio Group, L.P.*, DA 03-868 ¶ 7 (Enf. Bur. March 26, 2003).

factor and that a reduction of the \$8,000 forfeiture to \$5,400 is warranted.

7. Second, Petracom claims that it “has an excellent history . . . regarding compliance issues” and community service. According to Commission records, although Station KPGG(FM) appears to have an unblemished history of compliance, one of its sister companies does not. Specifically, Commission records reflect that a *Forfeiture Order* was recently issued against Petracom of Joplin, L.L.C., for violation of the EAS, as well as the public file, requirements.¹⁴ Because Petracom’s sister company has been the subject of an enforcement action, we find that Petracom’s reliance upon past history misplaced and that further reduction of the assessed forfeiture amount is not warranted.¹⁵

8. Finally, Petracom claims that it is “having serious financial difficulty” and that payment of the forfeiture would “have a serious impact on [its] ability to meet payroll and other expenses.”¹⁶ As the *NAL* correctly noted, we will consider adjusting or canceling a forfeiture on the basis of an inability to pay claim only if the petitioner submits financial documentation (*i.e.*, “federal tax returns for the most recent three-year period, financial statements prepared according to generally accepted accounting practices, or some other reliable and objective documentation that accurately reflects the petitioner’s current financial status”).¹⁷ Petracom offered to, but did not, provide any financial documentation in support of its requested adjustment or cancellation of the forfeiture,¹⁸ and thus we have no basis upon which to assess its inability to pay claim.¹⁹

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections

¹⁴ See *Petracom of Joplin, L.L.C.*, 19 FCC Rcd 6248 (Enf. Bur.2004) (“*Petracom-Joplin*”).

¹⁵ Findings of violations, or apparent violations, by parent, sister or commonly controlled companies are imputed to, and also negate the past history claim, of the company under investigation. See *CCN, Inc., et al.*, 13 FCC Rcd 13599, 13599-600 ¶ 1(1998); *Petracom Joplin, supra*, at ¶ 10; *Hill Country Real Estate Development Corp.*, 18 FCC Rcd 21079, 21080 ¶ 5 (Enf. Bur. 2003); *Rio Grande Transmission, Inc.*, 16 FCC Rcd 17040, 17042-43 ¶ 10 (Enf. Bur. 2001); *Mega Communications of St. Petersburg, Licensee, L.L.C.*, 16 FCC Rcd 15948, 15949 ¶ 6 (Enf. Bur. 2001).

¹⁶ Response at 3.

¹⁷ *NAL* at ¶ 10.

¹⁸ Specifically, Petracom offered to address its financial difficulties “separately on a confidential basis, and will file with the FCC appropriate financial material.” Response at 3. However, under the Rules and precedent, Petracom’s request for confidentiality had to *accompany* its submitted material (*i.e.*, financial documentation). See 47 C.F.R. § 0.457(d)(2), *see also KYOO-Communications*, 16 FCC Rcd 9291, 9292 ¶ 5 (Enf. Bur. 2001); *Callais Cablevision, Inc.*, 16 FCC Rcd 1359, 1366-67 (2001).

¹⁹ Outside of the instant case, the FCC has received notice that Petracom has filed for Chapter 11 bankruptcy. However, it appears that the Commission has notice that Petracom filed for bankruptcy. See *Petracom Joplin, supra*, at note 15. Here, because Petracom has not relinquished control over the station and has not submitted any supporting financial documentation, its bankruptcy filing, alone, neither precludes the imposition of a forfeiture, nor justifies an adjustment or cancellation of the forfeiture amount for a violation of the Rules. See 11 U.S.C. § 362(b); *see also United States v. Commonwealth Companies, Inc.*, 913 F.2d 518, 522-26 (8th Cir. 1990); *Coleman Enterprises, Inc.*, 15 FCC Rcd 24385, 24389 notes 27-28 (2000), *recon. denied*, 16 FCC Rcd 10016 (2001); *Adelphi Communications*, 18 FCC Rcd 7652, 7654 ¶ 8 (Enf. Bur. 2003).

0.111, 0.311 and 1.80(f)(4) of the Rules,²⁰ Petracom of Texarkana, L.L.C. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five thousand four hundred dollars (\$5,400) for its failure to comply with the EAS requirements, in willful and repeated violation of Section 11.35(a) of the Rules.²¹ For collection, the Commission will file a proof of claim at the appropriate time in Petracom's bankruptcy action.²²

10. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Joseph M. Fry, Vice President and Chief Financial Officer, Petracom of Texarkana, L.L.C., 1527 N. Dale Mabry Highway, Lutz, Florida 33548, and to M. Scott Johnson, Esq., Gardner, Carton & Douglas, 1301 K Street, N.W., Suite 900, East Tower, Washington, D.C. 20005.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

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

²¹ See 47 U.S.C. § 312(f); see also *Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4387-88 ¶ 5 (1991).

²² See *Commonwealth*, 913 F.2d at 523 note 15 *Coleman Enterprises, Inc.*, 15 FCC Rcd at 24390; see also note 19, *supra*.