

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

In the matter of)	File No. EB-02-OR-355
)	
Pearson Broadcasting of Mena, Inc.)	NAL/Acct. No. 200332620007
Licensee of KTTG(FM))	
Mena, Arkansas)	FRN No. 0003-7795-68

FORFEITURE ORDER

Adopted: July 29, 2004

Released: August 2, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of one thousand six hundred dollars (\$1,600) to Pearson Broadcasting of Mesa, Inc. (“Pearson”), licensee of FM Station KTTG, Mena, Arkansas, for willful and repeated violation of Section 11.61 of the Commission’s Rules (“Rules”).¹ The noted violation involves Pearson’s failure to receive and transmit required weekly and monthly tests of the Emergency Alert System (“EAS”).

2. On February 18, 2003, the Commission’s New Orleans District Office (“New Orleans Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Pearson for a forfeiture in the amount of two thousand dollars (\$2,000).² Pearson filed a response to the *NAL* on May 12, 2003.

II. BACKGROUND

3. On November 6, 2002, a New Orleans Office agent inspected Pearson’s Station KTTG. The agent inspected the printed record in KTTG’s EAS unit and determined that the station had neither received nor transmitted required weekly EAS tests (“RWT”) for the period June 23, 2002 to August 11, 2002. In addition, the New Orleans agent noted that KTTG had neither received nor transmitted required monthly EAS tests (“RMT”) during the same time period. The agent requested KTTG’s station logs for EAS tests but the station could not produce them. The station manager stated to the New Orleans Office agent that he did not know the last time that KTTG had aired an EAS test. Neither the station manager nor anyone else present at the station was able to run a test at the agent’s request.

4. The KTTG EAS unit’s continuous record covered only the period of June 23, 2002 to August 11, 2002. The station manager stated that he believed the EAS unit was malfunctioning and that the station engineer had been notified. The New Orleans Office agent found no entries in the station’s log to reflect the EAS operations, malfunctions, or dates the unit was not operational.

5. On February 18, 2003, the New Orleans Office issued a *NAL* to Pearson for two thousand

¹ 47 C.F.R. § 11.61.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332620007 (Enf. Bur., New Orleans Office, rel. February 18, 2003).

dollars (\$2,000) for its failure to conduct the required RWTs and RMTs in willful and repeated violation of Section 11.61 of the Rules. Pearson responds to the *NAL* denying that it willfully violated Section 11.61 of the Rules. Pearson states that responsibility for oversight of EAS compliance was assigned to the station engineer, and that shortly prior to the New Orleans Office agent's inspection, the KTTG engineer had been terminated. Pearson avers the station logs did exist and were last seen in the possession of the engineer. Pearson argues that its violation was not conscious and deliberate but was due to the "dereliction of duties" by its contract engineer, and that Pearson was in the process of taking corrective action at the time of the New Orleans Office inspection. Pearson explains that it has replaced the engineer with an individual who is certified by the Commission to conduct EAS and other facility inspections, who is a member of the Arkansas Broadcasters Association and the author of the EAS guidelines for Arkansas Broadcasters. Finally, Pearson requests relief from the forfeiture due to inability to pay, and provides financial information in support of its request.

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, ("Act"),³ Section 1.80 of the Rules,⁴ and *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) ("*Policy Statement*"). In examining Pearson's response, 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 such other matters as justice may require.⁵

7. Section 11.61 of the Rules requires tests to be made at regular intervals as specified in paragraphs (a)(1) and (a)(2) of that section. In particular, Section 11.61(a)(1) requires monthly tests of the EAS header codes, attention signal, test script and End of Message ("EOM") codes. Section 11.61(a)(2) requires weekly tests of the EAS header codes and EOM codes. At the time of the inspection on November 6, 2002, Pearson's EAS equipment record showed that no tests had been conducted during the period of June 23, 2002 to August 11, 2002. Pearson does not dispute that it failed to conduct tests during this time period. Accordingly, we conclude that Pearson willfully⁶ and repeatedly⁷ violated Section 11.61 of the Rules.

8. Pearson argues that its violation of Section 11.61 was not willful because it was the act of a station engineer who was terminated prior to the New Orleans Office agent's inspection. We find this argument to be without merit. "The Commission has long held that licensees and other Commission

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ Section 312(f)(1) of the 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" *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁷ As provided by 47 U.S.C. § 312(f)(2), "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, 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. Rep. 97th Cong. 2d Sess. 51 (1982). *Southern California Broadcasting Co.*, *supra*.

regulatees are responsible for the acts and omissions of their employees and independent contractors and has consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations.”⁸ We will, however, reduce the forfeiture from \$2000 to \$1600 because of Pearson’s good faith efforts to correct the violation prior to the New Orleans Office agent’s inspection.⁹

9. Pearson also seeks relief from the forfeiture because of losses the parent corporation and the station itself sustained in three years of operations.¹⁰ Operating losses are not a basis for reduction or cancellation of a forfeiture, however. The Commission has determined that, in general, a licensee’s gross revenues are the best indicator of its ability to pay a forfeiture.¹¹ After reviewing the financial data submitted, we find that the proposed forfeiture amount should not be reduced or cancelled on the basis of financial hardship.¹²

10. We have examined Pearson’s response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Pearson willfully and repeatedly violated Section 11.61 of the Rules, but we conclude that a reduction of the forfeiture amount is warranted. We will reduce the two thousand dollar (\$2,000) monetary forfeiture to one thousand six hundred dollars (\$1,600) because Pearson acted in good faith by taking action to correct the violation prior to the New Orleans Office agent’s inspection.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹³ Pearson Broadcasting of Mena, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one thousand six hundred dollars (\$1,600) for its willful and repeated violation of Section 11.61 of the Rules.

12. 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.¹⁴ 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. 200332620007* and *FRN*

⁸ *Eure Family Limited Partnership*, 17 FCC Rcd 21861, 21863-64 (2002) and cases cited therein.

⁹ *Radio One Licenses, Inc.*, 18 FCC Rcd 15964, 15965 ¶ 4 (2003), *recon. denied*, 18 FCC Rcd 25481 (2003).

¹⁰ When assessing the solvency of a licensee for purposes of reducing a forfeiture, the Commission examines the finances of the parent corporation, as well as its subsidiary, to determine how the forfeiture will financially affect the entire corporate position, *Alpha Broadcasting Corporation*, 102 FCC 2d 18 ¶ 6 (1984).

¹¹ *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992). Our evaluation of Pearson’s ability to pay necessitates a review of the revenues of not only the Pearson, but of its parent company, Pearson Broadcasting Management Services, Inc., as well, *see American Family Association*, 18 FCC Rcd 2413, 2424-15 ¶ 6 (Enf. Bur. 2003).

¹² *Id.* at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 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); *Afton Communications Corp.*, 7 FCC Rcd 6741 (Com. Car. Bur. 1992) (forfeiture not deemed excessive where it represented approximately 3.9 percent of the violator’s gross revenues).

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

¹⁴ 47 U.S.C. § 504(a).

No. 0003-7795-68. 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. 20554.¹⁵

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Pearson Broadcasting of Mena, Inc., 2937 Highway 71 North, Mena, Arkansas 71953.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁵ See 47 C.F.R. § 1.1914.