

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

In the Matter of)	
)	
Pittman Broadcasting Services, LLC)	File No. EB-02-OR-360
Licensee of Broadcast Stations KAOK(AM), Lake)	NAL/Acct No. 200332620006
Charles, Louisiana, and KAOK-FM, ¹ DeRidder,)	FRN 0006-1569-21
Louisiana)	
Covington, Louisiana)	

FORFEITURE ORDER

Adopted: August 5, 2004

Released: August 9, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a forfeiture in the amount of three thousand dollars (\$3,000) to Pittman Broadcasting Services, LLC (“*Pittman*”), licensee of radio broadcast stations KAOK(AM), Lake Charles, Louisiana, and KAOK-FM, DeRidder, Louisiana, for willful violation of Section 73.49 of the Commission’s Rules (“*Rules*”),² and cancel the proposed monetary forfeiture in the amount of eight thousand dollars (\$8,000) because we now conclude Pittman did not violate Section 11.35(a) of the Rules.³ The noted rules involve Pittman’s failure to maintain an effective locked fence enclosing its antenna tower for KAOK(AM) and rules regarding maintaining operational Emergency Alert System (“*EAS*”) equipment at both stations.

2. In a February 14, 2003 *Notice of Apparent Liability for Forfeiture* (“*NAL*”), the District Director of the Commission’s New Orleans, Louisiana Field Office (“*New Orleans Office*”) issued a monetary forfeiture of fifteen thousand dollars (\$15,000) to Pittman.⁴ On March 18, 2003, Pittman filed a response to the *NAL* (“*Response*”).

II. BACKGROUND

3. On December 3, 2002, an agent from the New Orleans Office (“*agent*”) inspected the co-located studio of co-owned broadcast stations KAOK(AM) and KAOK-FM in Lake Charles, Louisiana. The agent found that the stations’ *EAS* equipment was not functioning in accordance with Section 11.35(a) of the Rules. Specifically, the encoder/decoder unit was not connected to any receivers in order to monitor incoming alert signals. Moreover, station personnel were unable to produce any notation in

¹ The call sign was changed from KAOK-FM to KQLK, effective Feb. 3, 2003.

² 47 C.F.R. § 73.49.

³ 47 C.F.R. § 11.35(a).

⁴ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332620006 (Enf. Bur., New Orleans Office, rel. Feb. 14, 2003).

the station logs to confirm that EAS tests were sent or received between approximately October 27 and December 4, 2002, or that the equipment had been removed from service for repair. The stations' general manager also conceded that the stations had neither received nor conducted EAS tests for the approximate time frame of October 27, 2002 through December 4, 2002. In addition, an inspection of the KAOK(AM) antenna tower – which has radio frequency potential at the base – revealed that there was no effectively locked fence or other enclosure, in violation of Section 73.49 of the Rules. The inspection resulted in the issuance of the subject *NAL* by the New Orleans Office finding Pittman apparently liable for willful violation of Sections 11.35(a) (\$8,000) and 73.49 (\$7,000) of the Rules.

4. On March 17, 2003, Pittman filed a Response denying that it violated Section 11.35(a) of the Rules and disputing the fencing violation. Pittman also seeks a reduction of the proposed forfeiture amount based on a past history of compliance and financial hardship.

III. DISCUSSION

5. The proposed 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*.⁷ In examining Pittman’s response, Section 503(b) of the Act requires the Commission 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 such other matters as justice may require.⁸

6. Section 11.35(a) of the Rules requires broadcast stations to install and maintain operational EAS equipment so that monitoring and transmitting functions are available during the times when the stations and systems are operating. Section 11.35(b) of the Rules⁹ provides a caveat for permissible down-time of the equipment of up to 60 days for repair and replacement, so long as an entry is made in the broadcast station log. Pittman does not dispute the fact that the stations’ EAS equipment was out of service, or that no notation was made to that effect in its logs. However, after reviewing the record in this case, including the declaration submitted by Michael Schutta, General Manager,¹⁰ we conclude that the time frame that KAOK(AM) and KAOK-FM operated without the EAS equipment – approximately October 27, 2002, to December 4, 2002 – did not exceed the number of days that are permitted for repair under Section 11.35(b) of our Rules. We therefore conclude that the monetary forfeiture for violation of Section 11.35(a) should be cancelled.

7. Section 73.49 of the Rules requires that antenna towers having radio frequency potential at the base must be enclosed within an effectively locked fence or other enclosure. In a detailed narrative, Pittman argues that the subject antenna tower is effectively enclosed by natural and manmade barriers (including a partial fence), precluding the need for additional fencing.¹¹ Pittman alleges that a perpetually

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ *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*”).

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ 47 C.F.R. § 11.35(b).

¹⁰ See Response, at Exhibit 3: Declaration of Michael Schutta, General Manager. According to the Declaration of Michael Schutta, the EAS equipment was taken out of operation on October 27, 2002, and re-installed on December 4, 2002.

¹¹ *Id.* at 2-3.

marshy terrain, makes “foot access to the tower . . . impracticable, and eliminates any likelihood of casual trespass.”¹² Neither the Rules nor case law permit “natural barriers” to meet the requirements of Section 73.49 of the Rules, and Pittman provides no support for this proposition.¹³ Moreover, at the time of inspection and despite a rainstorm, the agent obtained direct access to the antenna tower from the vehicle entrance off of Highway 90. Finally, the station manager admitted that a fence was needed, but that he had not gotten around to installing one. Thus, we find that Pittman’s violation of Section 73.49 of the Rules was willful.¹⁴

8. In an attempt to mitigate the violation, Pittman avers that a fence has now been constructed.¹⁵ We find that no mitigation is warranted on the basis of Pittman’s alleged correction of the violation. As the Commission stated in *Seawest Yacht Brokers*, “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.”¹⁶

9. Pittman seeks a reduction of the forfeiture amount on the basis of a history of compliance.¹⁷ After considering Pittman’s record of compliance, we conclude that a reduction of the remaining forfeiture amount (\$7,000 as reduced) to \$5,600 is appropriate.

10. Pittman also seeks a further reduction of the forfeiture amount due to “extreme financial hardship, making payment of the any [*sic*] significant forfeiture difficult or impossible.”¹⁸ In analyzing economic-hardship claims, the Commission generally looks to companies’ gross revenues as reasonable and appropriate yardsticks to determine their ability to pay assessed forfeitures.¹⁹ Indeed, the Commission stated that if companies’ gross revenues are sufficiently large, the fact that net losses are reported, alone, does not necessarily signify inability to pay.²⁰

¹² *Id.* at 2.

¹³ Pittman’s statement concerning natural barriers goes to compliance with Section 1.1307 of the Rules which is not at issue here. *See* 47 C.F.R. § 1.1307 (actions requiring environmental assessments).

¹⁴ 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” *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹⁵ *Id.* at 3.

¹⁶ *See Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994), *See also AT&T Wireless Services, Inc.*, 17 FCC Rcd 7891 (2002), *forfeiture ordered*, 17 FCC Rcd 21866, 21875-76 (2002); *Callais Cablevision, Inc.*, 17 FCC Rcd 22626, 22629 (2002); *Radio Station KGVJ, Inc.*, 42 FCC 2d 258, 259 (1973); and *Executive Broadcasting Corp.*, 3 FCC 2d 699, 700 (1966).

¹⁷ Response at 5.

¹⁸ *Id.* at 4.

¹⁹ *See PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 ¶ 8 (1992); *see also Forfeiture Policy Statement* at 17106-07 ¶ 43.

²⁰ *See, e.g., Local Long Distance, Inc.*, 15 FCC Rcd 24385, 24389 (2000), *recon. denied*, 16 FCC Rcd 10023, 10025 (2001) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator’s gross revenues); *Hoosier Broadcasting Corporation*, 14 FCC Rcd 3356 (CIB 1999), *recon. denied*, 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).

11. As evidence of an inability to pay, Pittman recounts a February 2001 fire which allegedly destroyed the studio facility, and claims that the station did not receive full financial restitution from its insurance carrier. In addition, Pittman avers that as a result of the fire, KAOK was off of the air from February to November of 2001, resulting in lost listenership and clientele. To further substantiate this claim, Pittman submits tax returns from 1999, 2000 and 2001. Based on our review of Pittman's supporting financial documentation, we find that an inability to pay reduction of the remaining forfeiture amount from \$5,600 to \$3,000 is warranted.

12. We have examined Pittman's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement* as well. As a result of our review, we conclude that Pittman willfully violated Section 73.49 of the Rules, and that based on Pittman's history of compliance and current financial situation a reduction in the forfeiture amount from \$7,000 to \$3,000 is appropriate.

IV. ORDERING CLAUSES

13. 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,²¹ Pittman Broadcasting Services, LLC **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand dollars (\$3,000) for willfully violating Section 73.49 of the Rules.

14. **IT IS FURTHER ORDERED THAT**, pursuant to Section 504(b) of the Act,²² and Section 1.80 (f)(4) of the Rules, the portion of the *NAL* concerning Pittman Broadcasting Services, LLC violation of Section 11.35(a) of the Rules, **IS CANCELLED**.

15. 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.²³ 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 reference the *NAL/Acct. No.* referenced in the caption. 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. 20554.²⁴

16. **IT IS FURTHER ORDERED** that, a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Pittman Broadcast Services, LLC, 307 South Jefferson Street, Covington, Louisiana 70433, and to its counsel, Dan J. Alpert, 2120 N. 21st Road, Suite 400, Arlington, Virginia 22201.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

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

²² 47 U.S.C. § 504(b).

²³ 47 U.S.C. § 504(a).

²⁴ See 47 C.F.R. § 1.1914.