

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

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| In the Matter of |) | |
| |) | |
| A Radio Company, Inc. |) | File No.: EB-10-SJ-0054 |
| |) | NAL/Acct. No.: 201132680002 |
| Licensee of Station WEGA |) | FRN: 0010555654 |
| Vega Baja, Puerto Rico 00694 |) | Facility ID No.: 69853 |
| |) | |

FORFEITURE ORDER

Adopted: June 15, 2012

Released: June 15, 2012

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of twenty-five thousand dollars (\$25,000) to A Radio Company, Inc. (A Radio) for willful and repeated violation of an Enforcement Bureau (Bureau) order. The noted violations involved A Radio's failure to comply with the terms of the *Order and Consent Decree* entered into between the Bureau and A Radio.¹

II. BACKGROUND

2. On May 11, 2011, the Bureau's San Juan Office (San Juan Office) issued a Notice of Apparent Liability for Forfeiture² in the amount of \$25,000 to A Radio for its failure to comply with the terms of the *Order and Consent Decree*. As discussed in detail in the *NAL*, A Radio failed to submit an \$8,000 voluntary contribution and Compliance Report required by the *Order and Consent Decree*. A Radio submitted a response to the *NAL* acknowledging the violations, but requesting cancellation or reduction of the forfeiture due to inability to pay.³ A Radio states that its sole owner's "businesses were closed and [that] [he] was left owing \$70 million."⁴ A Radio further states that "bankruptcies were filed for most of [its owner's] corporations, with the exception of A Radio[;] . . . [and that] [t]here is only one corporation operating, other than A Radio."⁵ Accordingly, due to what it asserts is "overwhelming debt and almost nonexistent cash," A Radio contends that it is unable to pay the forfeiture.⁶

¹ *A Radio Company, Inc.*, Order and Consent Decree, 23 FCC Rcd 7337 (Enf. Bur. 2008) (*Order and Consent Decree*).

² *A Radio Company, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 6409 (Enf. Bur. 2011) (*NAL*). A comprehensive recitation of the facts and history of this case can be found in the *NAL*, and is incorporated herein by reference.

³ See Letter from Audrey P. Rasmussen, Attorney for A Radio, to William Berry, Resident Agent, San Juan Office (June 9, 2011) (on file in EB-10-SJ-0054) (*NAL Response*).

⁴ *Id.* at 1.

⁵ *Id.* at 2.

⁶ *Id.*

III. DISCUSSION

3. As A Radio does not deny any of the facts set forth in the *NAL*, we find that A Radio willfully and repeatedly violated a Bureau order by failing to comply with the terms of the *Order and Consent Decree* entered into between the Bureau and A Radio and issued pursuant to Sections 4(i) and 503(b) of the Communications Act of 1934, as amended (Act).⁷

4. A Radio claims that it lacks the ability to pay the proposed \$25,000 forfeiture, and submits financial documentation to support its claim. Section 503(b)(2)(E) of the Act states that, in determining the amount of a forfeiture penalty, the Commission shall 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 have reviewed A Radio's financial documents, which, standing alone, may arguably support its asserted inability to pay argument. The ability to pay a forfeiture, however, is just one of the criteria we must consider when determining the appropriate forfeiture penalty for violations of Bureau and Commission orders. As required by the statute itself, we also must consider the nature, circumstances, extent, and gravity of the violation.⁹ Here, A Radio failed to comply with the terms of a negotiated consent decree. The Commission has stated that "a consent decree violation, like misrepresentation, is particularly serious."¹⁰ A Radio's failure to submit the agreed upon voluntary contribution and compliance report, pursuant to the terms of the *Order and Consent Decree*, demonstrates bad faith and a complete disregard for Commission and Bureau authority. The Commission expects parties to honor agreements made in consent decrees, and A Radio's failure to do so undermines the value of consent decrees as an efficient means to resolve investigations without further expenditure of public resources. Nothing on the record in this case, including A Radio's ability to pay claim, warrants any leniency or mitigation of the proposed forfeiture amount.¹¹

5. We have examined the *NAL Response* pursuant to the statutory factors set forth in Section 503(b) of the Act,¹² and in conjunction with the *Forfeiture Policy Statement*¹³ and Section 1.80 of the Rules.¹⁴ Considering the entire record and the statutory factors listed above, we find that A Radio is liable for a forfeiture in the amount of \$25,000.

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Commission's

⁷ 47 U.S.C. §§ 154(i), 503(b).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ *Id.*

¹⁰ *SBC Communications, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 16 FCC Rcd 19091, 19125 (2001).

¹¹ See *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840 (Enf. Bur. 2011) (licensee's repeated willful and malicious intentional interference with other licensed communications outweighed licensee's evidence concerning his ability to pay the proposed forfeiture); *Hodson Broadcasting Corporation*, Forfeiture Order, 24 FCC Rcd 13699 (Enf. Bur. 2009) (permittee's continued operation at variance with its construction permit constituted an intentional and continuous violation, which outweighed permittee's evidence concerning its ability to pay the proposed forfeitures).

¹² 47 U.S.C. § 503(b).

¹³ *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*, 15 FCC Rcd 303 (1999).

¹⁴ 47 C.F.R. § 1.80.

rules, A Radio Company, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for violating the terms of a Bureau order adopted pursuant to Sections 4(i) and 503(b) of the Act.¹⁵

7. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement pursuant to Section 504(a) of the Act.¹⁶ The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must also be submitted. An FCC Form 159 may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>. When completing the FCC 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). Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. Payment by credit card may be made by providing the required credit card information on FCC form 159 and signing and ate the Form 159 to authorize the credit card payment. Requests for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁷ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or E-mail: ARINQUIRIES@fcc.gov. A Radio shall also send electronic notification to SCR-Response@fcc.gov on the date said payment is made.

8. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to A Radio Company, Inc. at P.O. Box 1488, Vega Baja, Puerto Rico 00694, and to Audrey P. Rasmussen, its attorney, at Hall Estill, 1120 20th Street N.W., Suite 700, North Building, Washington, D.C. 20036-3406.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau

¹⁵ 47 U.S.C. §§ 154(i), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4).

¹⁶ 47 U.S.C. § 504(a).

¹⁷ See 47 C.F.R. § 1.1914.