

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

In the Matter of)	
)	
NATCHEZ COMMUNICATIONS, INC.)	File No. 99-OR-156
FM Station WTYJ)	
Fayette, Mississippi)	NAL/Acct. No. 915OR0003

FORFEITURE ORDER

Adopted: March 2, 2000

Released: March 3, 2000

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of five thousand dollars (\$5,000) against Natchez Communications, Inc. (“Natchez”) for willful violation of Section 73.1213(b) of the Commission’s Rules (“Rules”).¹ The noted violation involves an antenna tower with defective paint and nonfunctioning lighting.

2. On July 8, 1999, the Commission’s New Orleans, Louisiana, Field Office, issued the referenced Notice of Apparent Liability (“NAL”) for a monetary forfeiture in the amount of ten thousand dollars (\$10,000) to Natchez for the noted violation.² Natchez filed a response to the NAL on August 9, 1999, and a supplement to it on September 28, 1999.

II. BACKGROUND

3. Natchez is the licensee of FM Station WTYJ in Fayette, Mississippi, and owns that station’s antenna tower (“tower”). On March 19, 1999, an agent from the Commission’s New Orleans Field Office conducted an inspection of the tower and determined that it exceeds 200 feet in height and must, therefore, be painted and illuminated in accordance with Section 17.21 of the Rules.³ During the inspection, the agent observed that the tower’s lights were not functioning, that its paint was severely chipped and faded, and that the antenna tower’s registration number was not posted on the tower.

4. On March 31, 1999, the New Orleans Field Office issued an Official Notice of Violation (“NOV”) to Natchez for failure to maintain the lighting and painting of its tower, failure to log antenna

¹ 47 C.F.R. § 73.1213(b).

² *Notice of Apparent Liability*, NAL Acct. No. 915OR0003 (Released July 8, 1999).

³ 47 C.F.R. § 17.21. Section 73.1213 (b) requires owners of antenna towers to comply with the lighting requirements of Part 17 of the Rules.

tower lighting outages in its station records, and failure to display the tower registration number on the tower. In its reply to the NOV, received April 15, 1999, Natchez's president stated that the site of the antenna had been condemned by the state and that it was preparing a request for Commission authority to move to a new site. Natchez stated further that: it did not know the tower lights were not functioning; it was in the process of hiring a crew to repair the lights; it was under the impression that the condition of the tower's paint was good enough to avoid repainting, since the tower would be taken down in the next 90 to 120 days; and it was in the process of correcting the failure to post the antenna tower registration number. In addition, Natchez asked whether it would be possible to obtain waiver of the tower painting requirement.⁴

5. On the night of May 13, 1999, and during the day on May 14, 1999, the agent again inspected the antenna tower of station WTYJ. The lights were still not working, the tower had not been repainted, and the antenna tower registration number had not been posted. During the agent's visit to the station's studio on May 14, 1999, the station manager informed the agent that Natchez could not find anyone locally to repair the lights and repaint the antenna tower. While at the studio, the agent obtained a copy of the station's logs. Those logs did not have the required entry noting the tower's lighting outage.

6. On July 8, 1999, the District Director, New Orleans Field Office issued the subject NAL to Natchez for inadequate painting and nonfunctioning lighting on its tower, in willful violation of Section 73.1213(b) of the Rules.

7. On August 9, 1999, the Commission received Natchez's response to the NAL. In that response, Natchez reported that it hired a Jonesboro, Arkansas, contractor, which repaired the tower lighting on May 20, 1999. Natchez did not address correction of the painting deficiency. Natchez contended that its violations were not willful and, therefore, do not warrant a forfeiture. In addition, Natchez argued that, if a forfeiture is imposed, the following mitigating factors should be considered: Natchez's request for a waiver of the tower painting requirement; Natchez's belief that it would not be necessary to repaint the antenna tower because of plans to demolish and relocate the tower within a few months; Natchez's inability to find a local contractor who could repaint the tower and repair the tower lights; Natchez's lack of prior violations; the fact that Natchez's tower is located more than 12 miles from the nearest airport; and Natchez's inability to pay the proposed forfeiture. Natchez provided copies of its 1996 and 1997 federal income tax returns with its August, 1999, response and provided a copy of its 1998 federal income tax returns with a supplemental response received September 28, 1999.

III. DISCUSSION

8. As the NAL explicitly states, the forfeiture amount in this case was assessed in accordance with Section 503 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*, 12 FCC Rcd 17087

⁴ Natchez did not, however, file a formal waiver request with the Mass Media Bureau.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

(1997), *recon. denied*, FCC 99-407, (rel. Dec. 28, 1999) (“*Policy Statement*”). In examining Natchez’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 other such matters as justice may require. 47 U.S.C. § 503(b)(2)(D).

9. Section 73.1213(b) of the Rules requires owners of antenna towers to paint and illuminate those towers as specified in Part 17 of the Commission’s Rules.⁷ In the instant case, Natchez claims its violations were not willful and, therefore, do not warrant a forfeiture. Following the inspection on March 19, 1999, if not before, Natchez knew that its tower did not comply with the painting and lighting requirements of Part 17 of the Rules. However, Natchez did not correct the lighting deficiency until May 20, 1999, and apparently still had not corrected the painting deficiency at the time of its August 9, 1999, response to the NAL. Accordingly we find that Natchez’s violations were both willful and intentional.⁸

10. Of Natchez’s mitigation arguments, only the inability to pay argument warrants any mitigation. The pendency of a waiver request does not mitigate a continuing violation of the Commission’s Rules. Natchez’s inability to find a local contractor who could repaint its tower and repair the tower’s lighting does not mitigate its violation. Natchez is responsible for the proper maintenance of its facilities. This includes, if necessary, hiring contractors from outside the local area – which Natchez eventually did. The absence of prior violations can justify a reduction of a forfeiture. However, in this case, Natchez *does* have prior violations. The violations detected on May 13 and 14, 1999, were a recurrence of the violations detected on March 19, 1999. Assuming, *arguendo*, that Natchez’s tower is located more than 12 miles from the nearest airport, that fact would not warrant any reduction of the forfeiture. The Commission has always considered failures to comply with its tower painting and lighting requirements as serious violations even when the tower is not near an airport. *See Radio Beaumont, Inc.*, 13 FCC 2d 965 (1968).

11. Although other factors can be considered, the best indication of a company’s ability to pay a forfeiture amount is its gross revenues. *See generally, PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992). Natchez’s tax returns indicate that it had gross revenues of \$42,181 in 1996; \$29,212 in 1997; and \$83,891 in 1998. In view of these revenues, we conclude that it is appropriate to reduce Natchez’s forfeiture from \$10,000 to \$5,000.

12. We have examined Natchez’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 Natchez has failed to provide a sufficient justification for canceling the proposed forfeiture amount, but has provided justification for reducing it to \$5,000.

IV. ORDERING CLAUSES

⁷ 47 C.F.R. § 17.1 *et seq.*

⁸ The word “willfully” as employed in Section 503 of the Act does not require that the violation in question be intentional. It is necessary only that a licensee knew it was doing the act in question. *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

13. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Act, Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,⁹ Natchez Communications, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$5,000 for the willful violation of Section 73.1213(b) of the Rules setting forth the painting and lighting requirements for radio towers.

14. 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 Order. If the forfeiture is not paid within the specified period, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁰ Payment may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or 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 the NAL/Acct. No. 915OR0003. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.

15. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by certified mail, return receipt requested, to counsel for Natchez Communications, Inc., Stephen Diaz Gavin, Esq., Patton Boggs LLP, 2550 M Street, N.W., Washington, D.C. 20037.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

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

¹⁰ 47 U.S.C. § 504(a).