

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

In the Matter of	)	File No. EB-02-SJ-087
	)	
Jorge L. Estrada	)	
Owner of Antenna Structure No. 1043939 in	)	NAL/Acct No. 200332680002
Cubuy, Puerto Rico	)	FRN 0008354300
Bayamon, Puerto Rico	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: November 28, 2006**

**Released: November 30, 2006**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order* (“*Order*”), we grant, to the extent indicated herein, the Petition for Reconsideration (“petition”) filed by Jorge L. Estrada (“Mr. Estrada”), owner of Antenna Structure No. 1043939, Cubuy, Puerto Rico. Mr. Estrada seeks reconsideration of the *Forfeiture Order*<sup>1</sup> in which the Enforcement Bureau (“Bureau”) found him liable for a monetary forfeiture in the amount of eight thousand dollars (\$8,000) for willful violation of Section 17.51 of the Commission Rules (“Rules”).<sup>2</sup> The violation involved Mr. Estrada’s failure to exhibit all red obstruction lighting from sunset to sunrise on Antenna Structure No. 1043939. For the reasons outlined below we will reduce the forfeiture amount to one hundred-fifty dollars (\$150).

**II. BACKGROUND**

2. On December 12, 2002, Commission Agents from the San Juan, Puerto Rico Office (San Juan Office) inspected the antenna structure and determined that the structure was not lighted by a red beacon during evening hours. The Federal Aviation Administration had no outage report for the tower light. On February 13, 2002, the San Juan Office issued a *Notice of Apparent Liability (NAL)* in the amount of \$10,000 for apparent willful violation of Section 17.51 of the Rules.<sup>3</sup> Mr. Estrada responded to the *NAL* admitting he was aware of the outage, but submitted numerous reasons for mitigation including an inability to pay claim. Mr. Estrada submitted no documentation in support of his claim. On November 19, 2004, the Bureau released a *Forfeiture Order* reducing the forfeiture amount to \$8,000 due to Mr. Estrada’s past history of compliance, but otherwise rejected his other arguments. On December 20, 2004, Mr. Estrada filed a petition for reconsideration of the *Forfeiture Order* and therein requested a cancellation of the forfeiture amount based upon an inability to pay.

**III. DISCUSSION**

3. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the

<sup>1</sup> *Jorge L. Estrada*, 19 FCC Rcd 22603 (Enf. Bur. 2004) (“*Forfeiture Order*”).

<sup>2</sup> 47 C.F.R. § 17.51.

<sup>3</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332680002 (Enf. Bur., San Juan Office, released February 13, 2003).

Communications Act of 1934, as amended (“Act”),<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*,<sup>6</sup> (“Policy Statement”). In examining Mr. Estrada’s petition, 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.<sup>7</sup>

4. Under the *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules,<sup>8</sup> inability to pay is a downward adjustment factor for Section 503 forfeitures. In analyzing economic-hardship claims, the Commission generally looks to a company’s gross revenues from the three most recent tax years as a reasonable and appropriate yardstick to determine its ability to pay an assessed forfeiture.<sup>9</sup> Thus, the Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status.

5. In his petition, Mr. Estrada represents that his annual income is reliant upon rental space that has recently been vacated and his income is “barely above poverty level.”<sup>10</sup> He claims that payment of the forfeiture would constitute an “extreme hardship on him.”<sup>11</sup> In support of his claim, Mr. Estrada provides the Commonwealth of Puerto Rico tax returns for 2001, 2002 and 2003.

6. After reviewing Mr. Estrada’s supporting documentation, we believe that payment of the \$8,000 forfeiture would pose a financial hardship.<sup>12</sup> Therefore, we conclude that a reduction of the proposed forfeiture amount to \$150 is warranted.<sup>13</sup>

#### IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act,<sup>14</sup> and Section 1.106 of the Rules,<sup>15</sup> Mr. Estrada’s petition for reconsideration of the *Forfeiture Order* **IS GRANTED**

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<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>7</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>8</sup> See *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

<sup>9</sup> See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17106-07, ¶ 43.

<sup>10</sup> Petition at 1.

<sup>11</sup> *Id.* at 2.

<sup>12</sup> See *Local Long Distance, Inc.*, 16 FCC Rcd at 10025 (forfeiture not deemed excessive where it represented approximately 7.9 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 of the violator’s gross revenues); *Alpha Ambulance, Inc.*, 19 FCC Rcd 2547, 2548 citing *PJB Communications*, 7 FCC Rcd at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator’s gross revenues).

<sup>13</sup> See *Maria L. Salazar*, 20 FCC Rcd 20598 (2005); *Business Cell Systems Plains*, 19 FCC Rcd 19755 (Enf. Bur. 2004); *WPGS, Inc.* 18 FCC Rcd 11332 (Enf. Bur. 2003).

<sup>14</sup> 47 U.S.C. § 405.

<sup>15</sup> 47 C.F.R. § 1.106.

**TO THE EXTENT NOTED HEREIN**, and that the \$8,000 forfeiture is reduced to one hundred - fifty dollars (\$150) for Mr. Estrada's willful violation of Section 17.51 of the Rules.

8. 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.<sup>16</sup> Payment may be made by credit card to 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, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director - Financial Operations, 445 12th St, SW, Room 1A625, Washington, DC 20554.<sup>17</sup>

9. **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 Jorge L. Estrada at his address of record, and his Counsel Richard F. Swift, Esq., Irwin, Campbell & Tannenwald, P.C., 1730 Rhode Island Ave., N.W., Suite 200, Washington, D.C. 20036-3101.

**FEDERAL COMMUNICATIONS COMMISSION**

Kris Anne Monteith  
Chief, Enforcement Bureau

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<sup>16</sup> 47 U.S.C. § 504(a).

<sup>17</sup> See 47 C.F.R. § 1.1914.