

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

In the Matter of)	
)	
M.C. ALLEN PRODUCTIONS)	File No. EB-00-IH-0392
)	NAL/Acct. No. 200132080055
Licensee of Station KMCA(AM))	
Burney, California)	
Facility ID # 64414)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 7, 2001

Released: May 9, 2001

By the Chief, Enforcement Bureau:

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that M.C. Allen Productions ("Allen") has apparently violated Section 301 of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 301, and sections 73.1125(e), 73.1615 and 73.1620 of the Commission's rules, 47 C.F.R. § 73.1125(e), 73.1615 and 73.1620, in connection with its operation of Station KMCA(AM), Burney, California. The apparent violations include periods of operation at unauthorized locations and on an unauthorized frequency, and a failure to maintain a local or toll-free telephone number in its community of license. We conclude that Allen is apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000).

BACKGROUND

2. In *Application of State of Oregon*, 15 FCC Rcd 15456, 15458 n. 13 (2000) (subsequent history omitted),¹ the Commission referred to the Enforcement Bureau the question whether Station KMCA's main studio location complied with section 73.1125(a) of the Commission's rules, 47 C.F.R. § 73.1125(a). After investigating the matter, we have determined that Station KMCA has maintained its main studio at locations authorized by the Commission's rules.² However, as explained below, we have also determined that Allen

¹ In that decision, the Commission reaffirmed the dismissal of an application whose proposed contour overlapped Allen's licensed contour in violation of section 73.37(a) of the Commission's rules, 47 C.F.R. § 73.37(a). The Commission determined that dismissal was appropriate because the applicant neither had protected Allen's licensed facilities in Burney nor requested a waiver of section 73.37(a). The applicant had contended, *inter alia*, that there was no need to protect Allen's licensed facilities because Allen had already relocated Station KMCA and its main studio out of Burney. The Commission observed that, notwithstanding Allen's alleged move, protection of the licensed facilities of Station KMCA was still appropriate in the event Allen found it impossible to construct in accordance with its permit, which allowed Station KMCA to construct a new AM station in Shasta, California. The Commission also noted that the applicant's allegations regarding Station KMCA's main studio did not justify a waiver of section 73.37(a) of the rules.

² Our investigation reveals that Station KMCA's main studio has always been within the principal community contour of Station KRRX(FM), Burney, and thus in compliance with section 73.1125(a)(2) of the Commission's rules, 47 C.F.R. § 73.1125(a)(2).

has apparently violated various statutory and rule provisions in its operation of Station KMCA. In addition, it appears that Allen does not currently have authority to operate Station KMCA in Shasta on 1460 kHz.

3. Allen holds a license to operate Station KMCA as a nondirectional AM station in the community of Burney on 1450 kHz. Its license was last renewed on July 14, 1999. Prior to that time, however, Allen had relocated Station KMCA to Shasta, a community some 55 miles to the southwest, adjacent to the larger community of Redding, California. Allen's only apparent authority for this move was a permit, which then authorized Allen to construct a new nondirectional AM station in Shasta. *See* File Nos. BP-19970903AA, granted June 12, 1998, and BMP-19980901AA, granted January 19, 1999.³ In this regard, the Commission's files reflect that Allen did not have special temporary authorization ("STA") to operate a broadcast station in Shasta until December 15, 1999. Moreover, upon expiration of that authority on May 30, 2000, Allen did not obtain additional STA. Rather, Allen continued to broadcast in Shasta as if it had such authority. Further, even though it did not file a license application that reflected completion of construction of its new directional AM station on 1460 kHz in accordance with its modified permit (*see* File No. BMP-20000324AAT, granted August 30, 2000) until February 2000, Allen's submissions reflect that it began to broadcast Station KMCA on 1460 kHz upon grant of its construction permit application, rather than upon issuance of staff approval following submission of its license application. *See* File No. BL-20010227ABW. In addition, once Station KMCA abandoned Burney, it also ceased maintaining a telephone number in Burney or a toll-free number.

DISCUSSION

4. Section 301 of the Act, 47 U.S.C. § 301, prohibits radio operation "except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act." Section 73.1615 of the Commission's rules, 47 C.F.R. § 73.1615, allows AM licensees that hold a permit to modify their facilities to discontinue operation or operate with temporary or reduced facilities for a period of no more than 30 days unless they receive authority to do otherwise upon notification to the Commission in Washington. Operation beyond the 30th day in accordance with the rule can occur only if the licensee (or its representative) signs and submits an informal letter requesting such authority to operate prior to the 30th day. Section 73.1620(a)(4) of the Commission's rules, 47 C.F.R. § 73.1620(a)(4), authorizes the permittee of a directional AM station to commence program tests but only after certain provisos are met. First, construction must be completed in accordance with the terms of the permit. Second, the permittee must submit its license application with a request for program test authority at least ten days "prior to the date on which it desires to commence program test operations." Third, the applicant must submit a proof of performance containing exhibits required by section 73.186 of the Commission's rules.⁴ Finally, program

³ We are aware that Allen filed an application for license to cover construction on November 5, 1999. *See* File No. BL-19991105AAZ, dismissed August 30, 2000. However, in that application, Allen responded "No" to the question: "Have all the terms, conditions, and obligations set forth in the above described construction permit been fully met?" In light of that answer, Allen did not have authority to conduct program tests. *See* section 73.1620(a)(1) of the Commission's rules, 47 C.F.R. § 73.1620(a)(1).

⁴ 47 C.F.R. § 73.186.

test operations may not commence prior to issuance of staff approval. To date, no such approval has been given. With respect to the main studio, section 73.1125(e) of the Commission's rules, 47 C.F.R. § 73.1125(e), requires broadcast licensees to maintain a local telephone number in their community of license or a toll-free number.

5. The information before us indicates that Allen had no authority to operate Station KMCA in Shasta between July 14, 1999 (the date its license for Burney was renewed) and December 15, 1999, when STA to broadcast in Shasta was granted. Likewise, upon expiration of its STA on May 30, 2000, Allen again had no authority to operate in Shasta and will not have such authority to broadcast on its new frequency (1460 kHz) until it acquires program test authority in accordance with section 73.1620(a)(4) of the Commission's rules. In short, since July 14, 1999, except for the six-month period covered by the STA, Allen has not operated Station KMCA in accordance with its license or in accordance with any other grant of authority. Rather, Allen has operated from an unauthorized location and, since August 30, 2000, operated on an unauthorized frequency. Finally, Allen has not maintained a local telephone number or a toll-free number in Burney, contrary to section 73.1125(e) of the Commission's rules, since its last renewal of license.

6. Section 503(b)(1) of the Act⁵ provides that any person who willfully or repeatedly fails to comply with the terms and conditions of his license or the Commission's rules shall be liable for a forfeiture penalty. In this context, the term "willful" means that the violator knew it was taking the action in question, irrespective of any intent to violate the Commission's rules,⁶ while "repeatedly" means more than once.⁷ Considering the information before us, it appears that Allen knew that, for most of the time following renewal of license to the present, it was operating Station KMCA at variance from its license. In this regard, Allen requested STA only twice (in November 1999 and June 2000) and received it only once. It further appears that Allen should have known that its 1999 license application did not qualify for program test authority inasmuch as Allen acknowledged that it had not completed construction in accordance with the 1999 permit. Moreover, in light of the plain language of section 73.1620(a)(4) of the Commission's rules, Allen also should have known that it did not have program test authority to operate Station KMCA from its present site until it received explicit staff approval, which it does not yet have. It thus appears that Allen's violations with respect to unauthorized operations were not only willful but also were intentional. It further appears that each of the violations described occurred on more than one day; thus, they were repeated. Finally, it also appears that Allen's failure to maintain an appropriate telephone number in Burney was both willful and repeated.

⁵ 47 U.S.C. § 503(b)(1). *See also* Section 1.80(a)(1) and (2), 47 C.F.R. § 1.80(a)(1) and (2).

⁶ *See Jerry Szoka*, 14 FCC Rcd 9857, 9865 (1999); *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁷ *See Hale Broadcasting Corp.*, 79 FCC 2d 169, 171 (1980).

7. In assessing a forfeiture, we take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,⁸ which include 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. The Commission's forfeiture guidelines currently establish base amounts of \$4,000 for operation at an unauthorized location, \$4,000 for operation on an unauthorized frequency, and \$7,000 for a violation of the main studio rule.⁹ Thus, the total base amount is \$15,000. In considering whether adjustments are appropriate, we note that Allen has operated from its construction permit site both before obtaining STA and after STA had expired. It thus appears that Allen's unauthorized operation has been both intentional and continuous, criteria that generally would warrant an upward adjustment of the forfeiture amount.¹⁰ In mitigation, however, we note that Allen's main studio violation is relatively minor in nature.¹¹ On balance, we find that \$15,000 forfeiture is appropriate.

8. Finally, we are concerned that Allen has continued to operate Station KMCA without appropriate authorization in apparent violation of the Commission's rules. We hereby notify Allen that if its operation of Station KMCA continues at Shasta without a license, program test authority or STA after release of this Notice of Apparent Liability, it may be necessary to institute further proceedings pursuant to Section 312 of the Act.¹² Such proceedings could lead to issuance of an order revoking the license for Station KMCA. In this regard, we emphasize that the mere pendency of the license application or the filing of a request for program test authority or STA will not suffice to avoid further enforcement action. Rather, the license application or request for program test authority or STA must be granted or Allen must terminate all unauthorized operation of Station KMCA immediately. Otherwise, Allen risks loss of the license for Station KMCA as well as additional forfeiture penalties.

ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,¹³ and Sections 0.111, 0.311 and 1.80 of the Commission's rules,¹⁴ M.C. Allen Productions is hereby NOTIFIED of its

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ See *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).

¹⁰ See *WRHC Broadcasting Corp.*, Notice of Apparent Liability, 15 FCC Rcd 5551 (Enforcement Bureau 2000).

¹¹ See *Rasa Communications Corp.*, Notice of Apparent Liability, 11 FCC Rcd 13243 (Mass Media Bureau 1996).

¹² 47 U.S.C. § 312.

¹³ 47 U.S.C. § 503(b).

¹⁴ 47 C.F.R. §§ 0.111, 0.311, 1.80.

APPARENT LIABILITY FOR A FORFEITURE in the amount of fifteen thousand dollars (\$15,000) for: violating Section 301 of the Act and sections 73.1615 and 73.1620 of the Commission's rules¹⁵ regarding a licensee's operation during modification of facilities and a permittee's commencement of program tests; and for violating section 73.1125(e) of the Commission's rules¹⁶ by failing to maintain a local or toll-free number for the community of Burney.

10. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's rules,¹⁷ within thirty days of this NOTICE OF APPARENT LIABILITY, M.C. Allen Productions SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. referenced above.

12. The response, if any, must be mailed to the Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. referenced above.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent 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 respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁸

¹⁵ 47 U.S.C. § 301; 47 C.F.R. §§ 73.1615 and 73.1620.

¹⁶ 47 C.F.R. § 73.1125(e).

¹⁷ 47 C.F.R. § 1.80.

¹⁸ See 47 C.F.R. § 1.1914.

15. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to M.C. Allen Productions, 4531 Shannon Place, Redding, California 96001.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau