

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

In the Matter of	)	
	)	
Radford Communications, Inc.	)	File No. EB-00-NF-310
Station WKRK(AM)	)	NAL/Acct. No. 200132640002
Murphy, North Carolina	)	

**FORFEITURE ORDER**

**Adopted: February 27, 2001**

**Released: March 1, 2001**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of three thousand dollars (\$3,000) to Radford Communications, Inc. (“Radford”), licensee of Station WKRK(AM), Murphy, North Carolina, for willful violation of Section 17.4(a) of the Commission’s Rules (“Rules”).<sup>1</sup> The noted violation involves Radford’s failure to register its antenna structure.

2. On October 19, 2000, the Commission’s Norfolk, Virginia, Resident Agent Office (“Norfolk Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Radford for a forfeiture in the amount of three thousand dollars (\$3,000).<sup>2</sup> Radford filed a response to the NAL on November 15, 2000.

**II. BACKGROUND**

3. On July 1, 2000, an agent from the Norfolk Office inspected Station WKRK(AM) to determine whether the station was in compliance with the Commission’s Emergency Alert System and antenna structure registration rules. Station WKRK(AM)’s antenna structure is required to be registered because it is more than 200 feet in height above ground level.<sup>3</sup> At the time of the inspection, Timothy Radford, the president of Radford, admitted that the antenna structure was not registered.

4. On August 11, 2000, the Norfolk Office issued a Notice of Violation (“NOV”) to Radford for failure to register the antenna structure. In its response to the NOV, Radford conceded that the antenna structure was not registered. Radford stated that it had hired a contract engineer in December 1996 to measure and register the tower, but that the engineer never completed the work, despite numerous follow-up calls and a letter from Radford requesting that the work be completed. Although Radford

<sup>1</sup> 47 C.F.R. § 17.4(a).

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200132640002 (Enf. Bur., Norfolk Office, released October 19, 2000).

<sup>3</sup> *See* 47 C.F.R. § 17.7(a).

acknowledged that it was responsible for ensuring that the tower was registered, it argued that its actions demonstrate that it made efforts to get the work done and did not simply ignore the Commission's rules. Radford also stated that, following the FCC inspection, it hired another contractor to measure the tower and began completing the necessary tower registration forms itself.

5. On October 19, 2000, the Norfolk Office issued the subject *NAL* to Radford for failure to register its antenna structure in willful violation of Section 17.4(a) of the Rules. On November 20, 2000, the Commission received Radford's response to the *NAL*, which seeks rescission or reduction of the forfeiture. Radford requests that we take into consideration its efforts to comply with the Commission's rules. Radford states that it hired a contract engineer to gather the information needed to register the tower, but for some unexplained reason the engineer did not follow through and complete the work. Radford further states that it has hired another engineer to complete the job and is currently awaiting the results of an aeronautical study of the tower by the Federal Aviation Administration so that it can provide the necessary information on the tower registration form. Radford also requests that we take into account its financial status and provides tax returns for 1997, 1998 and 1999.

### III. DISCUSSION

6. As the *NAL* explicitly states, the forfeiture amount in this case was assessed in accordance with Section 503 of the 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*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Policy Statement*"). In examining Radford'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.<sup>6</sup>

7. Section 17.4(a) of the Rules provides that effective July 1, 1996, owners of any existing antenna structures that require notification to the Federal Aviation Administration must register the structure with the Commission. Antenna structure owners were required to register existing antenna structures by state during prescribed filing windows between July 1, 1996, and June 30, 1998.<sup>7</sup> Following the expiration of the filing period, the Commission staff issued a Public Notice warning antenna structure owners to register any unregistered antenna structures subject to our requirements immediately or face

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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> 47 U.S.C. § 503(b)(2)(D).

<sup>7</sup> *Streamlining the Commission's Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking and Lighting of Antenna Structures*, 11 FCC Rcd 4272, 4281 (1995). Under the filing window schedule established by the Commission, existing antenna structures located in North Carolina were required to be registered during a August 1-31, 1996 filing window. *Id.* at 4302.

possible monetary forfeitures or other enforcement action.<sup>8</sup> We find that Radford willfully violated Section 17.4(a) by failing to register its antenna structure.<sup>9</sup>

8. Radford requests that we consider its efforts to comply with the antenna structure registration requirement as a mitigating factor. We do not believe that Radford's efforts warrant mitigation of the forfeiture amount. The Commission has long held that licensees are responsible for the acts or omissions of their employees and independent contractors. See *MTD, Inc.*, 6 FCC Rcd 34, 35 (1991); *Wagenvoord Broadcasting Co.*, 35 FCC 2d 361 (1972). Furthermore, Radford's remedial efforts to correct the violation are not a mitigating factor. See *Station KGVL, Inc.*, 42 FCC 2d 258, 259 (1973).

9. Radford also requests that we take into account its financial status. Although other factors can be considered, the Commission has held that a licensee's gross income is generally the best indicator of its ability to pay a forfeiture. See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992). Radford's tax returns indicate that it had gross revenues of \$211,057 in 1997; \$236,164 in 1998; and \$257,398 in 1999. The proposed forfeiture amount of \$3,000 is not excessive in the context of these revenues.

10. We have examined Radford'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 Radford has failed to provide sufficient justification for canceling or mitigating the proposed forfeiture amount. Therefore, we affirm the forfeiture of three thousand dollars (\$3,000).

#### IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act,<sup>10</sup> and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>11</sup> Radford Communications, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand dollars (\$3,000) for failure to register its antenna structure in willful violation of Section 17.4(a) of the Rules.

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules<sup>12</sup> 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>13</sup> 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,

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<sup>8</sup> Public Notice, "No-Tolerance Policy Adopted for Unregistered Antenna Structures" (WTB, January 13, 1999).

<sup>9</sup> The term "willfully" as employed in Section 503 of the Act does not require that the violation in question be intentional. It is necessary only that the licensee knew that it was doing the act in question. See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>10</sup> 47 U.S.C. § 503(b).

<sup>11</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>12</sup> 47 C.F.R. § 1.80.

<sup>13</sup> 47 U.S.C. § 504(a).

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Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. referenced above. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>14</sup>

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to Radford Communications, Inc., 1707 Andrews Road, Murphy, North Carolina 28906, and its counsel, W. David Sumpter, III, Esq., 39 Hiawassee Street, Murphy, North Carolina 28906.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>14</sup> See 47 C.F.R. § 1.1914.