

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

In the Matter of)	
)	
L.T. Simes II and Raymond Simes)	File No. EB-02-OR-196
)	
Licensee of KAKJ(FM),)	NAL/Acct. No. 200232620007
Marianna, Arkansas)	
)	
and)	FRN 0007-2844-17
)	
Owner of Unregistered Antenna Structure)	
near Marianna, Arkansas)	
)	
West Helena, Arkansas)	

FORFEITURE ORDER

Adopted: April 29, 2003

Released: May 1, 2003

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 L.T. Simes II and Raymond Simes (collectively, “Simes”), licensee of FM station KAKJ, Marianna, Arkansas, and owners of an unregistered antenna structure located at geographic coordinates 34° 47’ 20” North latitude and 090° 47’ 08” West longitude near Marianna, Arkansas, for willful violation of Sections 11.35(a), 17.4(a) and 73.1350(a) of the Commission’s Rules (“Rules”).¹ The noted violations involve Simes’s failure to ensure that Emergency Alert System (“EAS”) equipment was installed and operational at KAKJ, failure to register the antenna structure for KAKJ with the Commission, and failure to operate KAKJ in accordance with the terms of its station authorization.

2. On July 22, 2002, the Commission’s New Orleans, Louisiana Field Office (“New Orleans Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Simes for a forfeiture in the amount of fifteen thousand dollars (\$15,000).² Simes filed a response to the *NAL* on August 22, 2002.

II. BACKGROUND

3. On May 22, 2002, an agent from the New Orleans Office inspected an antenna structure which was located at 34° 47’ 20” North latitude and 090° 47’ 08” West longitude near Marianna,

¹ 47 C.F.R. §§ 11.35(a), 17.4(a) and 73.1350(a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232620007 (Enf. Bur., New Orleans Office, released July 22, 2002).

Arkansas. The agent observed that there was no antenna structure registration (“ASR”) number posted on or near the base of the antenna structure. The owner of the property on which the structure was located told the agent that the structure was owned by the licensee of a radio station that operates on 105.3 MHz in West Helena, Arkansas. A search of Commission records indicated that KAKJ is licensed to operate on 105.3 MHz in West Helena, Arkansas.

4. On May 23, 2002, the agent inspected the studio of KAKJ in West Helena, Arkansas, accompanied by Raymond Simes, the general manager and one of the principal owners of KAKJ. At the time of the inspection, the agent observed that the station did not have any EAS equipment installed. In addition, there were no station logs that would indicate that the station had ever had EAS equipment installed or that the EAS equipment had been removed for repairs.³ The agent also observed that the station authorization for KAKJ authorizes an antenna structure of 330 feet in height and located at geographic coordinates 34° 47’ 14” North latitude and 090° 46’ 03” West longitude. However, Mr. Simes confirmed that the antenna structure observed by the agent the previous day at geographic coordinates 34° 47’ 20” North latitude and 090° 47’ 08” West longitude was owned by Simes and was the transmitting antenna for KAKJ. Thus, the actual location of KAKJ’s transmitting antenna was approximately one mile west of its authorized location. Mr. Simes was unable to explain the discrepancy between the authorized location and actual location of the transmitting antenna. Finally, Mr. Simes stated that he believed that the antenna structure had been properly registered, but was unable to provide any documentation to support this claim.

5. On June 14, 2002, the agent searched the Commission’s ASR database and determined that the antenna structure for KAKJ was not registered.

6. On July 22, 2002, the New Orleans Office issued an *NAL* to Simes for a forfeiture in the amount of \$15,000 for failure to install EAS equipment at KAKJ in willful violation of Section 11.35(a) of the Rules, failure to register the antenna structure for KAKJ in willful violation of Section 17.4(a) of the Rules, and failure to operate KAKJ in accordance with the terms of its station authorization in willful violation of Section 73.1350(a) of the Rules. In the response to the *NAL*, Simes does not dispute that the violations occurred, but seeks cancellation or reduction of the forfeiture amount. Simes asserts that KAKJ is located in a poor, rural area where it is difficult to find a dependable broadcast engineer. Simes indicates that a contract engineer provided the appropriate notification for the antenna structure to the Federal Aviation Administration in 1994, but asserts that, without an engineer, it was not aware of the rule changes implemented in 1996 which required registration of antenna structures with the FCC. In addition, Simes states that it was not aware that the geographic coordinates for its antenna structure, which were specified in its original construction permit application in 1993 by the contract engineer who prepared the application, were incorrect. Simes also indicates that it intends to install EAS equipment and to register its antenna structure. Finally, Simes asserts that it cannot afford to pay the forfeiture and provides copies of its tax returns for 1999, 2000 and 2001 in support of this assertion.

III. DISCUSSION

³ EAS activations and tests, failure to receive such tests and EAS equipment malfunctions must be recorded in the station log. See 47 C.F.R. §§ 11.35(a)-(b), 11.55(c)(7) and 11.61(b).

7. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, (“Act”),⁴ Section 1.80 of the Rules,⁵ 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 Simes’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.⁶

8. Section 11.35(a) of the Rules provides that a broadcast station must ensure that EAS equipment is installed so that the monitoring and transmitting functions are available during the times the station is in operation. Simes acknowledges in its response to the *NAL* that it did not have EAS equipment installed at KAKJ at the time of the May 23, 2002 inspection. Accordingly, we conclude that Simes violated Section 11.35(a) of the Rules.

9. Section 17.4(a) of the Rules provides that, effective July 1, 1996, the owner of any proposed or existing antenna structure that requires notification of proposed construction to the FAA must register the structures with the Commission. Simes’s antenna structure is approximately 330 feet in height and therefore required notification to the FAA.⁷ Simes admits that its antenna structure was not registered.⁸ We therefore conclude that Simes violated Section 17.4(a) of the Rules.

10. Section 73.1350(a) of the Rules provides that each broadcast licensee is responsible for maintaining and operating its broadcast station in accordance with the terms of the station authorization. The authorization for KAKJ authorizes an antenna structure located at geographic coordinates 34° 47’ 14” North latitude and 090° 46’ 03” West longitude. Simes does not dispute that KAKJ’s transmitting antenna is located at coordinates 34° 47’ 20” North latitude and 090° 47’ 08” West longitude, which is approximately one mile from the coordinates specified in the authorization. Accordingly, we conclude that Simes violated Section 73.1350(a) of the Rules.

11. We also conclude that Simes’s violations were willful. The term “willful,” as used in Section 503(b) of the Act, does not require a finding that the rule violation was intentional or that the violator was aware that it was committing a rule violation.⁹ Rather, the term “willful” simply requires

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ See 47 C.F.R. § 17.7 (providing that notification to the FAA is required for antenna structures that are more than 200 feet in height).

⁸ Owners of antenna structures in Arkansas were required to register their existing antenna structures during a 30-day filing window between January 1 to January 31, 1998. *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, 4302 (1995).

⁹ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful,’ ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd

that the violator knew it was taking the action in question, irrespective of any intent to violate the Commission's rules.¹⁰ Simes asserts that it was not aware of the changes to the antenna structure rules implemented in 1996 which required registration of antenna structures with the FCC. However, we note that licensees are expected to become familiar with and comply with the Commission's rules.¹¹ Simes offers no evidence of what steps, if any, it took to become familiar with and comply with the Commission's rules. Moreover, while Simes claims that the incorrect geographic coordinates were provided by the contract engineer who prepared its original construction permit application in 1993, the Commission has long held that licensees are responsible for the acts and omissions of their employees and contractors.¹² Furthermore, Simes certified in its license application for KAKJ that it had constructed the station in accordance with its construction permit,¹³ which specified that the antenna structure was to be located at geographic coordinates 34° 47' 14" North latitude and 090° 46' 03" West longitude.

12. In addition, although Simes indicates that it intends to install EAS equipment and to register its antenna structure, the Commission has stated that post-violation remedial efforts to correct a violation are not mitigating factors warranting reduction of a forfeiture.¹⁴ Simes also asserts that it cannot afford to pay the proposed \$15,000 forfeiture and provides its tax returns for 1999, 2000 and 2001 in support of this assertion. The Commission has repeatedly held that a company's gross revenues are the best indicator of its ability to pay a forfeiture.¹⁵ After considering the financial documentation submitted by Simes, we conclude that reduction of the forfeiture to \$3,000 is appropriate.

13. We have examined Simes'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 Simes willfully violated Sections 11.35(a), 17.4(a) and 73.1350(a) of the Rules, but we reduce the forfeiture proposed for these violations from \$15,000 to \$3,000.

14. Finally, we note that a search of Commission's ASR database revealed that, as of the release date of this *Order*, Simes still had not registered its antenna structure with the Commission. In addition, under Section 73.1690(b)(2) of the Rules,¹⁶ a broadcast licensee must file an application for a construction permit on FCC Form 301 to make any change in station geographic coordinates, including coordinate corrections of more than 3 seconds latitude and/or 3 seconds longitude. To date, no such application has been filed to correct the coordinates for KAKJ. Moreover, it is unclear from the record

4387 (1991).

¹⁰ *Id.*

¹¹ *Sitka Broadcasting Company, Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Company*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Company*, 23 FCC 2d 868 (1970).

¹² See *MTD, Inc.*, 6 FCC Rcd 34, 35 (1991); *Wagenvoord Broadcasting Co.*, 35 FCC 2d 361 (1972).

¹³ File No. BLH-19950713KA.

¹⁴ See e.g., *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002); *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994); *Station KGV L, Inc.*, 42 FCC 2d 258, 259 (1973).

¹⁵ See *Long Distance Direct, Inc.*, 15 FCC Rcd 3297, 3305 (2000); *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1991).

¹⁶ 47 C.F.R. § 73.1690(b)(2).

whether Simes has yet installed EAS equipment at KAKJ. Accordingly, we will require, pursuant to Section 308(b) of the Act, that Simes submit a report to the Enforcement Bureau within 30 days of the release of this *Order* demonstrating that it has filed an antenna structure registration application and an application to correct the station coordinates and installed EAS equipment. Simes' report must be submitted in the form of an affidavit signed by an officer of the licensee.

IV. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to Section 503 of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁷ L.T. Simes, II and Raymond Simes **ARE LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand dollars (\$3,000) for willful and repeated violation of Sections 11.35(a), 17.4(a) and 73.1350(a) of the Rules.

16. **IT IS FURTHER ORDERED** that, pursuant to Section 308(b) of the Act, Simes must submit the report described in paragraph 14 no later than thirty (30) days from the date of release of this *Order* to: Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554, Attention: Kathryn Berthot, Room 7-C802.

17. 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.¹⁸ Payment may 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, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232620007 and FRN 0007-2844-17. 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. 20554.¹⁹

18. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail, return receipt requested, to L.T. Simes, II and Raymond Simes, P.O. Box 2870, West Helena, Arkansas 72390.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

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

¹⁸ 47 U.S.C. § 504(a).

¹⁹ See 47 C.F.R. § 1.1914.