

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

In the Matter of
AGM-Nevada, LLC
Licensee of Station WMV815
Albuquerque, New Mexico
Facility ID # 25529
Licensee of Station WMW873
Albuquerque, New Mexico
Facility ID # 51762
Licensee of Station KYLZ-FM1
Albuquerque, New Mexico
Facility ID # 82812
File No. EB-02-DV-067
and
File No. EB-02-DV-071
and
File No. EB-02-DV-072
NAL/Acct. No. 200232800012
FRN 0005-7738-90

FORFEITURE ORDER

Adopted: January 30, 2003

Released: February 3, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of nine thousand six hundred dollars (\$9,600) to AGM-Nevada, LLC ("AGM"), licensee of booster station KYLZ-FM1, and former licensee of aural studio-to-transmitter link ("STL") stations WMV815 and WMW873 in Albuquerque, New Mexico, for willful and repeated violation of Section 74.551(a)(3) of the Commission's Rules ("Rules") and willful violation of Section 74.1235(e) of the Rules. The noted violations involve AGM's operation of WMV815 and WMW873 from an unauthorized location and AGM's operation of KYLZ-FM1 in excess of authorized transmitter power output ("TPO") limits.

2. On June 28, 2002, the Commission's Denver, Colorado Field Office ("Denver Office") issued a Notice of Apparent Liability for Forfeiture ("NAL") to AGM for a forfeiture in the amount of twelve thousand dollars (\$12,000). AGM filed a response to the NAL on July 25, 2002.

1 An aural STL station is a fixed station for the transmission of aural program material between the studio and the transmitter of a broadcasting station. See 47 C.F.R. § 74.501(a). At the time of the violations, WMV815 and WMW873 were STLs for KYLZ-FM and KLVO-FM, respectively, which are both licensed to AGM.

2 47 C.F.R. §§ 74.551(a)(3) and 74.1235(e).

3 Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200232800012 (Enf. Bur., Denver Office, released June 28, 2002).

II. BACKGROUND

3. On March 26, 2001, the Denver Office received a complaint alleging that AGM's booster stations KLVO-FM1 and KYLZ-FM1 in Albuquerque were causing adjacent channel interference to two FM stations licensed to Albuquerque.

4. On April 17, 2001, an agent from the Denver Office inspected KLVO-FM and its booster station KLVO-FM1 and KYLZ-FM1. The agent did not observe any interference from these stations at the time of the inspection. However, the agent found that KYLZ-FM1 was operating with excessive TPO. KYLZ-FM1 is authorized to operate with a TPO of 1,800 watts. At the time of the inspection, the calculated TPO was 2,280 watts or 127% of the authorized TPO. The agent also found that the two STL stations, WMV815 and WMW873, were operating from an unauthorized location. The licenses for WMV815 and WMW873 both specified a transmitter address of 300 San Mateo Avenue in Albuquerque. At the time of the inspection, the STL transmitters were located at 4125 Carlisle Street in Albuquerque. According to an AGM employee, AGM relocated its main studio for KYLZ-FM and KLVO-FM and the two STL transmitters from 300 San Mateo Avenue to 4125 Carlisle Street in approximately December 1998.

5. On June 27, 2002, the Denver Office issued an *NAL* to AGM for a \$12,000 forfeiture for operating WMV815 and WMW873 from unauthorized locations in willful and repeated violation of Section 74.551(a)(3) of the Rules and operating KYLZ-FM1 in excess of authorized TPO limits in willful violation of Section 74.1235(e) of the Rules. In its response to the *NAL*, AGM does not dispute that it violated these rules. However, AGM requests cancellation or reduction of the forfeiture proposed in the *NAL*. AGM asserts that it was aware that the STL stations were not in compliance with the rules and that it was in the process of correcting the violations of Section 74.551(a)(3) at the time of the April 17, 2001 inspection. In this regard, AGM states that it sought and received a frequency coordination authorization, dated March 22, 2001, from the New Mexico Radio Broadcasters frequency coordinator and that it was preparing FCC Forms 601 for a number of its STL facilities operating in the Albuquerque area reflecting the results of the coordination report at the time of the inspection. AGM further states that on May 1, 2001, it filed applications for new STL stations for KYLZ-FM and KLVO-FM and commenced initial operations with facilities specified in these applications under the authority set forth in Section 74.24 of the Rules.⁵ The Commission staff granted these applications on July 13, 2001.⁶ AGM also asserts that the STL station violations were minor because they involved only the transmit point address, that there were no complaints of interference regarding the STL station operations, and that there is no showing that the public interest was harmed by the shift in the transmit point. In addition, AGM argues that the violation of Section 74.1235(e) by KYLZ-FM1 was an isolated incident and that the station caused no interference during the brief period of the violation. Finally, AGM asserts that it has an overall record of compliance with the Commission's rules.

⁴ AGM's pleading was captioned as a "petition for reconsideration," rather than a response to the *NAL*. Consistent with Section 1.80(f)(3) of the Rules, 47 C.F.R. § 1.80(f)(3), we will treat this pleading as a response to the *NAL*.

⁵ Section 74.24 of the Rules provides that certain types of broadcast auxiliary stations, including aural STL stations, may be operated on a short-term basis under the authority conveyed by a Part 73 license without prior Commission authorization, provided that certain conditions are met. 47 C.F.R. § 74.24.

⁶ File Nos. 0000445207 and 0000444921.

III. DISCUSSION

6. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, (“Act”),⁷ Section 1.80 of the Rules,⁸ 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 AGM’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.⁹

7. Section 74.551(a)(3) of the Rules provides that prior Commission approval is required for a change in the location of a transmitter or transmitting antenna for an aural STL station, except when the relocation of the transmitter is within the same building. AGM does not dispute that it relocated the STL transmitters without prior Commission authorization and operated the STL transmitters from an unauthorized location. Accordingly, we find that AGM willfully¹⁰ and repeatedly¹¹ violated Section 74.551(a)(3) of the Rules.

8. AGM asserts that it was in the process of correcting the violations of Section 74.551(a)(3) at the time of the April 17, 2001 inspection. However, AGM offers no explanation as to why it did not seek prior Commission approval to relocate the STL transmitters or why it operated the STL transmitters for more than two years at an unauthorized location before taking corrective action. Moreover, while AGM apparently did seek frequency coordination for the STLs prior to the inspection, it did not file appropriate applications with the Commission until after the inspection.¹² AGM does not explain why it did not bring the matter to the Commission’s attention or request special temporary authority to operate the STL transmitters from the new location at the same time it began seeking frequency coordination. Under these circumstances, we do not believe that any reduction of the forfeitures proposed for these violations on this basis is warranted. We also do not believe that AGM’s operation of the STL stations at an unauthorized location for more than two years are “minor” violations, warranting reduction of the forfeiture amount. Further, the absence of interference or any showing of

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. § 1.80.

⁹ 47 U.S.C. § 503(b)(2)(D).

¹⁰ 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 4387 (1991).

¹¹ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to forfeitures assessed pursuant to Section 503(b) of the Act, provides that “[t]he term ‘repeated,’ ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

¹² The Commission has stated that remedial actions taken to correct a violation, while commendable, are not mitigating factors warranting reduction of a forfeiture. See *Station KGVV, Inc.*, 42 FCC 2d 258, 259 (1973).

harm to the public interest does not entitle AGM to a reduction of the proposed forfeitures under the Commission's downward adjustment criteria for forfeitures.¹³

9. Section 74.1235(e) of the Rules provides that FM booster stations may not be operated with a TPO in excess of 105% of the authorized TPO. KYLZ-FM1 was authorized to operate with a TPO of 1,800 watts. AGM does not dispute that at the time of the inspection, KYLZ-FM1 was operating with a TPO of 2,280 watts, which is 127% of the authorized TPO. Accordingly, we conclude that AGM willfully violated Section 74.1235(e) of the Rules. As noted above, the absence of interference does not entitle AGM to a reduction of the forfeiture amount proposed for this violation under the downward adjustment criteria. Moreover, Section 74.1235(e) provides FM booster stations some leeway, allowing them to operate with a TPO of up to 105% of the authorized TPO. In this case, however, the station was operating with a TPO which was substantially in excess of the authorized TPO. Nevertheless, after considering AGM's history of overall compliance with the Commission's rules, we reduce the total forfeiture amount proposed in the *NAL* for AGM's violations of Sections 74.551(a)(3) and 74.1235(e) from \$12,000 to \$9,600.

10. We have examined AGM'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 AGM willfully and repeatedly violated Section 74.551(a)(3) of the Rules and willfully violated Section 74.1235(e) of the Rules, but we reduce the forfeiture proposed for these violations from \$12,000 to \$9,600.

IV. ORDERING CLAUSES

11. 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,¹⁴ AGM-Nevada, LLC **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of nine thousand six hundred dollars (\$9,600) for willful and repeated violation of Section 74.551(a)(3) of the Rules and willful violation of Section 74.1235(e) of the Rules.

12. 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.¹⁵ 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. 200232800012 and FRN 0005-7738-90. 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. 20554.¹⁶

¹³ *Policy Statement*, 12 FCC Rcd at 17113; 47 C.F.R. § 1.80(b), Note to paragraph b(4): *Section II.-Adjustment Criteria for Section 503 Forfeitures*. See also *Dickenson County Broadcasting Corporation*, 68 FCC 2d 1510 (1977) and *Page-Comm*, 16 FCC Rcd 6842 (Enf. Bur., 2001) (both finding that an absence of interference is not a mitigating factor warranting reduction of a forfeiture).

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

¹⁵ 47 U.S.C. § 504(a).

¹⁶ See 47 C.F.R. § 1.1914.

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail, return receipt requested, to AGM-Nevada, LLC, P.O. Box 2700, Bakersfield, California 93303, and to its counsel, John S. Neely, Esq., Miller & Miller, P.C., P.O. Box 33003, Washington, D.C. 20033.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau