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

In the Matter of	)	
	)	
Pilgrim Communications, Inc.	)	File Number: EB-01-DV-044
	)	
Licensee of Station KSKE(AM)	)	NAL/Acct. No. 200332800004
Vail, Colorado	)	FRN 0006-1472-19
Facility ID # 16272	)	

FORFEITURE ORDER

Adopted: May 17, 2004 **Released: May 19, 2004**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* ("*Order*"), we issue a monetary forfeiture in the amount of eleven thousand dollars ($11,000) to Pilgrim Communications, Inc. ("Pilgrim"), licensee of AM radio station KSKE in Vail, Colorado, for willful and repeated violation of Section 73.1125(a) of the Commission's Rules ("Rules"), and willful violation of Sections 73.1560(a) and 73.1745(a) of the Rules.[1] The noted violations involve Pilgrim's failure to maintain a main studio for station KSKE, its failure to reduce KSKE's power at sunset to the nighttime level required by the station authorization and its exceeding KSKE's authorized nighttime power level.

2. On November 20, 2002, the Commission's Denver, Colorado, Field Office ("Denver Office") issued a *Notice of Apparent Liability for Forfeiture* ("*NAL*") to Pilgrim for a forfeiture in the amount of eleven thousand dollars ($11,000).[2] Pilgrim responded to the *NAL* on January 21, 2003, and filed a supplementary response on February 20, 2003.

II. BACKGROUND

3. Radio station KSKE is authorized to operate with 5,000 watts of power during daytime hours and 217 watts between sunset and sunrise, on frequency 610 kHz. On May 9, 2001, an agent from the Denver Office monitored KSKE and took numerous field strength measurements at locations near the KSKE transmitter between 7:30 p.m. to 9:00 p.m. MDT. According to its station authorization, KSKE should have switched from daytime to nighttime power at 8:15 p.m. The agent observed no change in the field strength from 8:15 p.m. to 9:00 p.m.

4. On May 10, 2001, the agent attempted to inspect KSKE's main studio. The agent went to the location listed for KSKE in the local telephone directory, 0210 Edwards Village Blvd., Unit B-206,

[1] 47 C.F.R. § 73.1125(a), 73.1560(a) and 73.1745(a).

[2] *Notice of Apparent Liability for Forfeiture,* NAL/Acct. No. 200332800004 (Enf. Bur., Denver Office, released November 20, 2002).

Edwards, Colorado, but found no studio at that location. Employees at a business adjacent to Unit B-206 told the agent that they had no knowledge of a studio for KSKE in the vicinity. The agent called the local telephone number listed for KSKE but found it was disconnected. The agent, however, was able to contact Pilgrim's corporate office in Indianapolis, Indiana, which informed him that Pilgrim had no staff in the Vail area and that Pilgrim's staff at AM station KLMO in Longmont, Colorado (approximately 160 miles from Vail), remotely controlled KSKE's transmitter.

5. Additionally, on May 10, 2001, the agent measured KSKE's field strength during daylight hours and noted no change from the May 9 nighttime measurements. The agent then asked the operator at KLMO in Longmont to reduce KSKE's power to its authorized nighttime level through remote control. When the operator did so, the reduction in KSKE's measured field strength confirmed that KSKE had been operating with power in excess of its authorized nighttime power on May 9, 2001.

6. On July 30, 2001, the Denver Office issued an Official Notice of Violation ("NOV") to Pilgrim for violations at KSKE. In its response, Pilgrim stated that, after notification by the FCC, it corrected KSKE's power level by correcting an error in the programming of the remote power control system. Pilgrim also stated that it maintained a studio for KSKE in Edwards, Colorado, and that it had a telephone number and one employee there.

7. On November 20, 2002, the Denver Office issued a *NAL* to Pilgrim for a forfeiture in the amount of eleven thousand dollars ($11,000). In its January 21, 2003, response to the *NAL*, Pilgrim states that KSKE is "staffed by a full time staff person based at the station's studio" in Eagle-Vail, Colorado; that the chief operator monitors KSKE's technical operations "on a daily basis, using remote computer access"; that it has equipment in place which is properly adjusted to assure compliance with the terms of KSKE's license; and that it has instituted daily manual checks to insure that KSKE's power level is properly adjusted. Pilgrim requests cancellation of the proposed forfeiture on the basis of its correction of the violations and its inability to pay the proposed monetary forfeiture. Pilgrim filed a supplementary response on February 20, 2003, containing copies of its 1998, 1999, 2000 and 2001 federal income tax returns.

III. DISCUSSION

8. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),[3] Section 1.80 of the Rules,[4] 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*"). Section 503(b) of the Act requires that the Commission, in examining Pilgrim's response, 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.[5]

9. Section 73.1560(a) of the Rules provides that AM stations must be maintained as near as practicable to the authorized antenna input power. Section 73.1745(a) of the Rules provides, in pertinent part, that no broadcast station shall operate with power other than that specified and made a part of the license unless otherwise provided in Part 73 of the Rules. On May 9, 2001, Pilgrim did not reduce KSKE's power at sunset to the level required by the station authorization and operated with power exceeding of the authorized nighttime level, in willful[6] violation of Sections 73.1560(a) and 73.1745(a) of

[3] 47 U.S.C. § 503(b).

[4] 47 C.F.R. § 1.80.

[5] 47 U.S.C. § 503(b)(2)(D).

[6] Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are

(continued....)

the Rules.

10. Section 73.1125(a) of the Rules requires that every broadcast station licensee maintain a main studio for the station. Although Pilgrim claimed in its response to the NOV that it maintained a main studio in Edwards, Colorado, the FCC agent found that there was no main studio at that location. Furthermore, during a telephone conversation on May 10, 2001, the staff member at station KLMO who remotely controlled KSKE told the agent that Pilgrim formerly had a studio in Edwards, Colorado, but had closed it. We conclude that Pilgrim had no main studio for station KSKE, in willful and repeated[7] violation of Section 73.1125 of the Rules.

11. To the extent that Pilgrim now complies with Sections 73.1125(a), 73.1560(a) and 73.1745(a) of the Rules, no mitigation is warranted on the basis of Pilgrim's correction of its violations of those rules. As the Commission stated in *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994), "corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations."[8]

12. Finally, Pilgrim argues that, if the proposed $11,000 forfeiture is imposed, it will be unable to pay that amount. In support of its financial hardship claim, Pilgrim submits copies of its 1998, 1999, 2000 and 2001 federal income tax returns.[9] The Commission has determined that, in general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.[10] After reviewing the financial data submitted, we find that the proposed monetary forfeiture should not be cancelled or reduced.[11]

13. We have examined Pilgrim'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 Pilgrim willfully and repeatedly violated Section 73.1125(a) of the Rules and willfully violated Sections 73.1560(a) and 73.1745(a) of the Rules and that neither cancellation nor reduction of the proposed $11,000 monetary forfeiture is warranted.

14. Pilgrim's response to the *NAL* indicates that KSKE's main studio currently has "a full

---

(...continued from previous page)
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).

[7] As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. *The Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). *See Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991).

[8] *See also Callais Cablevision, Inc.,* 17 FCC Rcd 22626, 22629 (2002); *Radio Station KGVL, Inc*., 42 FCC 2d 258, 259 (1973); and *Executive Broadcasting Corp*., 3 FCC 2d 699, 700 (1966).

[9] Since we consider only the three most recent federal income tax returns, we are not considering the 1998 return.

[10] *See PJB Communications of Virginia, Inc.,* 7 FCC Rcd 2088, 2089 (1992).

[11] *Id*. at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 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 percent of the violator's gross revenues); *Afton Communications Corp*., 7 FCC Rcd 6741 (Com. Car. Bur. 1992) (forfeiture not deemed excessive where it represented approximately 3.9 percent of the violator's gross revenues). We have reviewed Pilgrim's financial data in this case and another case involving Pilgrim simultaneously and have determined it is able to pay both forfeitures. *Pilgrim Communications, Inc.,* DA 04-xxxx (Enf. Bur., released mm/dd/04).

time staff person" but does not indicate that there is any managerial presence at the main studio. To serve the needs and interests of the residents of a broadcast station's community of license, the licensee must maintain a full-time staff and managerial presence during normal business hours.[12] Accordingly, we will require, pursuant to Section 308(b) of the Act,[13] that Pilgrim report to the Enforcement Bureau within thirty (30) days of the release of this *Order* whether there is a managerial presence at KSKE's main studio and, if the report indicates that there is a managerial presence, describe the managerial presence. Pilgrim's report must be submitted in the form of an affidavit signed by an officer or director of the licensee. If Pilgrim fails to submit such a report or we find that Pilgrim has not come into compliance with our main studio rule, we will consider further appropriate enforcement action.

IV. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,[14] Pilgrim Communications, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eleven thousand dollars ($11,000) for willfully and repeatedly violating Section 73.1125(a) of the Rules and willfully violating Sections 73.1560(a) and 73.1745(a) of the Rules.

16. **IT IS ALSO ORDERED** that, pursuant Section 308(b) of the Act, Pilgrim must submit the report described in Paragraph 14, above, within 30 days from the release of this *Order*, to Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Room 7-A 820, Washington, D.C. 20554.

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.[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. 200332800004 and FRN 0006-1472-19. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.[16]

18. **IT IS FURTHER ORDERED** That a copy of this *Forfeiture* shall be sent by certified mail, return receipt requested, to Pilgrim's counsel, Marnie K. Sarver, Esq., Wiley, Rein & Fielding LLP, 1776 K Street, N.W., Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

---

[12] *Jones Eastern of the Outer Banks, Inc.,* 6 FCC Rcd 3615, 3616 and n.2 (1992), *clarified*, 7 FCC Rcd 6800 (1992).

[13] *47 U.S.C. § 308(b)*

[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.