

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

In the Matter of	)	
	)	
Simmons-SLC, LS, LLC	)	File No. EB-02-DV-076
Licensee of FM Station KJQN	)	NAL/Acct. No. 200332800009
Brigham City, Utah	)	FRN 0004-9693-74
	)	
Licensee of FM Translator Station K264AC	)	
Utah County, Utah	)	

**FORFEITURE ORDER**

**Adopted: July 1, 2004**

**Released: July 2, 2004**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of three thousand two hundred (\$3,200) to Simmons-SLC, LS, LLC, (“*Simmons*”), licensee of FM station KJQN in Brigham City, Utah, and translator station K264AC, in rural Utah County, Utah, for willful and repeated violation of Section 74.1232(d) of the Commission's Rules (“*Rules*”).<sup>1</sup> The noted violation involved Simmons using station K264AC to extend the 1 mV/m contour of FM station KJQN beyond its authorized contour.

2. On January 6, 2003, the Commission's Denver, Colorado Field Office (“*Denver Office*”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Simmons in the amount of four thousand dollars (\$4,000).<sup>2</sup> Simmons filed a response to the *NAL* on February 3, 2003.

**II. BACKGROUND**

3. Station K264AC is licensed to Simmons and, at the time of the issuance of the *NAL*, was authorized to provide fill-in service for then Simmons owned FM station KSFI in Salt Lake City, Utah.<sup>3</sup> Station K264AC is authorized to provide service to rural Utah County and to transmit from West

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<sup>1</sup>47 C.F.R. § 74.1232(d).

<sup>2</sup>*Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332800009 (Enf. Bur., Denver Office, released January 6, 2003).

<sup>3</sup>On November 24, 2003, the license of KSFI(FM) was assigned from Simmons to Bonneville Holding Company, File No. BALH-20021122ABY.

Mountain, approximately 40 miles south of downtown Salt Lake City. On April 10, 2002, the Denver Office received a complaint that FM translator station K264AC was transmitting FM station KJQN's signal beyond the 1 mV/m contour into areas approximately 50 miles south of downtown Salt Lake City. Simmons also owns station KJQN which is licensed to Brigham City, Utah, and transmits from Cow Mountain approximately 70 miles north of downtown Salt Lake City. KJQN's 1 mV/m contour lies entirely north of downtown Salt Lake City and station K264AC's 1 mV/m contour lies entirely south of downtown Salt Lake City. The authorized 1 mV/m contours of K264AC and KJQN do not overlap.

4. On April 10, 2002, the Denver Office agent contacted Simmons' Director of Engineering. The engineer admitted that K264AC was transmitting the signal of station KJQN rather than KSFI, that station K264AC's coverage contour is outside of KJQN's 1 mV/m contour, and that station K264AC had been operating with that configuration for approximately 30 days. On October 21, 2002, the Denver Office issued a Notice of Violation ("NOV") to Simmons for violation of Section's 74.1232(d) and 74.1251(c) of the Rules. On October 31, 2002, the Denver Office received a response from Simmons stating that station K264AC ceased transmitting the signal of station KJQN on April 11, 2002.

5. On January 6, 2003, the Denver Office issued the *NAL* for violation of Section 74.1232(d) of the Rules. On February 3, 2003, Simmons submitted a response to the *NAL*. In that response, Simmons does not challenge the findings of the *NAL* that it willfully and repeatedly violated Section 74.1232(d) of the Rules. Rather, Simmons seeks a reduction in the amount of the proposed forfeiture based the fact that it has a history pf compliance with the Commission's rules. The response is accompanied by a copy of its October 31, 2002 response to the NOV.

### III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) 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* ("*Forfeiture Policy Statement*").<sup>6</sup> In examining Simmons' 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>7</sup>

7. A broadcast station licensee is responsible for maintaining and operating the station in accordance with the terms of the station license. Section 74.1232(d) of the Rules sets forth generally that an authorization for a FM translator whose coverage contour extends beyond the protected contour of the commercial primary station will not be granted to the licensee or permittee of a commercial FM radio broadcast station. Translator station K264AC was authorized to transmit the signal of its primary station KSFI. By using station K264AC to transmit station KJQN, Simmons failed to comply with the terms of station K264AC's license and improperly extended the 1 mV/m contour of station KJQN. In its response,

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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>12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>7</sup>47 U.S.C. § 503(b)(2)(D).

Simmons does not challenge the findings of the NAL, that it willfully and repeatedly violated Section 74.1232(d) of the Rules.

8. Simmons seeks a reduction in the amount of the proposed forfeiture, arguing that it has a history of compliance with the Commission's rules. We have reviewed Simmons' records and we concur. Based on the findings of the NAL and Simmons' response, we find that Simmons' violation of Section 74.1232(d) was willful<sup>8</sup> and repeated.<sup>9</sup> Considering the entire record and the factors listed above, we find that reduction of the proposed forfeiture is warranted because of Simmons' compliance record with the Commission's Rules. Accordingly, the forfeiture amount is reduced from four thousand dollars (\$4,000) to three thousand two hundred dollars (\$3,200).

#### IV. ORDERING CLAUSES

9. 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,<sup>10</sup> Simmons-SLC, LS, LLC **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand two hundred dollars (\$3,200) for willfully and repeatedly violating Section 74.1232(d) of the Rules.

10. 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.<sup>11</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, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 200332800009, and FRN: 0004-9693-74. 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.<sup>12</sup>

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<sup>8</sup> 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).

<sup>9</sup>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. 97<sup>th</sup> Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

<sup>10</sup>47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>11</sup>47 U.S.C. § 504(a).

<sup>12</sup>See 47 C.F.R. § 1.1914.

11. **IT IS FURTHER ORDERED** that, a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Bret Leifson, Controller, Simmons-SLC, LS, LLC, 515 South 700 East, Suite 1C, Salt Lake City, Utah, 84102.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau