

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

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| In the Matter of |) | |
| |) | |
| JMK Communications, Inc. |) | File Number EB-02-CF-723 |
| WTRI |) | NAL/Acct. No. 200332340005 |
| Brunswick, Maryland |) | FRN: 0006-1615-09 |
| |) | |

FORFEITURE ORDER

Adopted: August 17, 2004

Released: August 19, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of eighteen thousand dollars (\$18,000) to JMK Communications, Inc. (“JMK”), licensee of WTRI, Brunswick, Maryland for willful violation of Sections 1.89, 73.49, and 73.1125(a) of the Commission’s Rules (“Rules”)¹. The noted violations involve failure to respond to Commission correspondence, failure to enclose station antenna within an effective locked fence or enclosure, and failure to maintain a meaningful staff presence at the main studio.

2. On April 28, 2003, the Commission’s Columbia, Maryland Field Office (“Columbia Office”) released a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to JMK proposing a forfeiture in the amount of eighteen thousand dollars (\$18,000) for willful violation of Sections 1.89, 73.49, and 73.1125(a) of the Rules.² JMK filed a response on May 28, 2003.

3. In its response to the *NAL*, JMK denies that it willfully³ violated Sections 1.89, 73.49, and 73.1125(a) of the Rules. JMK seeks reduction or cancellation of the proposed forfeiture on the following grounds: that “appropriate steps have been taken to ensure proper future handling” of important Commission correspondence to avoid future mail mishaps, that the failure to maintain a meaningful staff presence at the main studio of WTRI was a “temporary anomaly occasioned by an unfortunate medical situation,” that the gap in JMK’s fence was not large enough to allow public access and is surrounded by an outer perimeter fence which provides a further barrier to public access, and that the licensee has a history of compliance with the Commission’s Rules.

¹ 47 C.F.R. § 1.89, 73.49, and 73.1125(a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332340005 (Enf. Bur., Columbia Office, released April 28, 2003).

³ 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).

II. BACKGROUND

4. On November 14, 2002, an agent from the Columbia Office attempted an inspection of station WTRI, Brunswick, Maryland for compliance with FCC Rules. The agent found that the station failed to maintain a meaningful staff presence at the main studio because it was locked and unstaffed from 1:10 p.m. until the agent departed the studio address at 3:45 p.m. The agent also observed that the station did not have one of the three antenna towers enclosed within an effective locked fence. On November 22, 2002, the agent returned to the station. Again, the main studio was locked and unstaffed. The agent found a note on the studio door directing visitors across the street to the residence of a station employee. The agent found the employee and completed an inspection. The employee identified himself as the chief engineer. The FCC agent found no management staff presence at the main studio.

5. On December 16, 2002, the Columbia Office issued a Notice of Violation (“NOV”) to JMK for violations of Commission Rules. The NOV was mailed to the address of record, but no reply was received to the NOV. On January 17, 2003, the Columbia Office issued a follow up letter to the NOV with a copy of the NOV attached. The Columbia Office received a postal receipt proving delivery of the letter on January 25, 2003, but did not receive a reply to the January 17 letter.

III. DISCUSSION

6. The forfeiture amount in this case was proposed 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*.⁶ In examining JMK’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 such other matters as justice may require.⁷

7. Section 1.89 of the Rules specifies that the recipient shall send a written reply within ten days of receipt of an official notice to the Commission office originating the official notice. The Columbia Office received no reply to the NOV or follow-up letter. JMK admits that its agent received but neglected to forward the certified NOV to the attention of its President or other appropriate personnel. JMK does not contest the violation and states that it has undertaken steps to prevent such a violation from recurring in the future.

8. Section 73.1125(a) of the Rules requires that licensees maintain a main studio. On November 14, 2002, a Columbia Office agent attempted to inspect the station during normal business hours and found the main studio locked and unmanned. JMK concedes that the studio was unmanned for six hours, but argues that this was a “temporary anomaly” because the operator has special medical needs and had to leave for medical attention. Were this to have been a one time aberration because of health,

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

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

⁷ 47 U.S.C. § 503(b)(2)(D).

we might agree with the licensee. However, a few days later, at the time of inspection on November 22, 2002, JMK still had no management presence at the main studio, only maintenance staff. Additionally, JMK's practice of putting a sign on a radio station door directing the public to return later or indicating that a station employee can be found down the street does not constitute the required meaningful management and staff presence at the main studio location.⁸ In *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615 (1991), clarified, 7 FCC Rcd 6800 (1992), the Commission defined a minimally acceptable "meaningful presence" as full-time managerial and full-time staff personnel present during normal business hours."⁹ JMK states that it has now undertaken several actions to improve and upgrade the station's monitoring and control capabilities and to mitigate the violation.¹⁰ However, these efforts do not establish the requisite meaningful staff presence at the studio in the past.

9. Section 73.49 of the Rules requires that antenna towers having radio frequency potential at the base be enclosed within effective locked fences or other enclosures. On November 14, 2002, a Columbia Office agent discovered and photographed a large gap in the fence around one of the station's towers where the fencing had pulled away from its supporting structure. In its response, JMK submitted some pictures dated six months later, on May 28, 2003 as proof that the reported gap in its fence was not large enough to "permit members of the public to approach the WTRI tower." However, pictures taken by JMK several months later do not rebut the agent's earlier observations, corroborated by pictures, of a large gap. Additionally, the agent's contemporaneous record of the November 14, 2002, inspection indicates the existence of an approximate six foot break in JMK's outer perimeter fence. Therefore, this perimeter fence was not a sufficient barrier to prevent the public from accessing the tower. JMK also argues that, in contrast to recent cases *Truth Broadcasting Corporation*, 17 FCC Rcd 24376 (Enf. Bur. 2002), *Culpeper Broadcasting Corporation*, 15 FCC Rcd 12594 (Enf. Bur. 2000), *Mitchell Communications, Inc.*, 11 FCC Rcd 22391 (Enf. Bur. 2002) and *Wilson Broadcasting Co.*, 18 FCC Rcd 4864 (Enf. Bur. 2003), JMK's fence was indeed effective. We disagree. We find that the gap in JMK's fence was large enough to allow public access, and that JMK lacked an outer perimeter fence which could have provided a further barrier to public access.

10. JMK maintains it is no longer in violation of Sections 1.89, 73.1125(a) and 73.49 of the Rules and has taken several steps to remedy the defects identified by the Commission agent. However, no mitigation is warranted on the basis of JMK's post-inspection efforts to correct the violations. 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."¹¹

⁸ See *Main Studio and Program Origination Rules*, 2 FCC Rcd 3215, 3217-18 (1987), clarified, 3 FCC Rcd 5024, 5026 (1998).

⁹ See *Jones Eastern*, 6 FCC Rcd at 3616 n.6; 7 FCC Rcd at 6800.

¹⁰ JMK also argues that its situation is not "comparable in gravity to those" in *A-O Broadcasting Corporation*, 17 FCC Rcd 24184 (2002) or the Mass Media Bureau's *Memorandum Order and Opinion in B&C Kentucky*, 16 FCC Rcd 9305 (MMB 2001) "in which the respective stations had no studio at all." We reject the argument. The record in this case demonstrates that on at least two occasions, when the agent sought to inspect WTRI's main studio, the facility failed to meet the main studio requirements. The facility was locked and inaccessible, and there was no management staff present. In effect, there was no main studio. Accordingly, WTRI violated Section 73.1125(a).

¹¹ 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).

11. Finally, in support of its request for cancellation or reduction, JMK states that it has “an overall past history of compliance with the Commission’s rules.” After a review of Commission records, we have determined that no mitigation is warranted for a history of overall compliance. On March 4, 2004, the Columbia Office issued an *NAL* to JMK for violations of Sections 11.35(a), 73.1745(a), 73.3526(e)(5) and 73.3526(e)(12) of the Rules¹² at Radio Station WPWC, Dumfries-Triangle, VA, licensed to JMK. JMK, therefore, has no history of overall compliance.¹³

12. Considering the entire record and the factors listed above, we find that there is no basis for cancellation or reduction of the proposed monetary forfeiture. Accordingly, we find that JMK willfully violated Sections 1.89, 73.1125(a), and 73.49 of the Rules and assess an \$18,000 forfeiture.

13. As of the adoption date of this *Order*, JMK has not provided evidence that it has complied with Section 73.1125(a) of the Rules. Based upon the licensee’s history of non-compliance, we will require, pursuant to Section 308(b) of the Act,¹⁴ that JMK report to the Enforcement Bureau no more than thirty (30) days following the release of this *Order* whether it has come into compliance with Section 73.1125(a) by demonstrating that the required meaningful staff and management presence is being maintained at the WTRI studio. JMK’s report must be submitted in the form of an affidavit or declaration, under penalty of perjury, signed by an officer or director of the licensee.

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act¹⁵, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules¹⁶, JMK Communications, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eighteen thousand dollars (\$18,000) for its willful violation of Sections 1.89, 73.49, and 73.1125(a) of the Rules.

15. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission’s Rules¹⁷ 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 credit card through the Commission’s Credit and Debt Management Center at (202) 418-1995 or 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. Payment by overnight mail may be sent to Bank One/LB 73482,

¹² 47 C.F.R. § 11.35(a), 73.1745(a), 73.3526(e)(5) and 73.3526(e)(12).

¹³ See *Mega Communications of St. Petersburg Licensee, L.L.C.*, 16 FCC Rcd 15948,49 (Enf. Bur. 2001).

¹⁴ 47 U.S.C. § 308(b).

¹⁵ 47 U.S.C. § 503(b).

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

¹⁷ 47 C.F.R. § 1.80.

¹⁸ 47 U.S.C. § 504(a).

525 West Monroe, 8th Floor Mailroom, Chicago, Illinois 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. The payment must include the FCC Registration Number (FRN) and the NAL/Acct. No. referenced in the caption. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.¹⁹

16. **IT IS FURTHER ORDERED** that, pursuant to Section 308(b) of the Act, JMK must submit the report described in Paragraph 13 above, no more than thirty (30) days following the release of this *Order*, to the Federal Communications Commission, Spectrum Enforcement Division, 445 12th Street, S.W., Room 4-A223, Washington, D.C. 20554, Attention: Emmitt Carlton, Esq.

17. **IT IS FURTHER ORDERED** that a copy of this *Forfeiture Order* shall be sent by First Class and Certified Mail, Return Receipt Requested, to JMK Communications, Inc., 4525 Wilshire Boulevard, Los Angeles, California, 90010 and to its counsel, Peter Gutmann, Esq., Carlyle, Sandridge & Rice, Seventh Floor, 1401 Eye Street, N.W., Washington, D.C. 20005.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁹ See 47 C.F.R. § 1.1914.