

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

In the Matter of
Palmetto Broadcasting Company, Inc.
Anderson, South Carolina
File No. EB-03-AT-085
NAL/Acct. No. 200332480024
FRN 0008-9109-45

FORFEITURE ORDER

Adopted: September 3, 2004

Released: September 8, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of two thousand dollars (\$2,000) to Palmetto Broadcasting Company, Inc. ("Palmetto"), licensee of station WAIM-AM, Anderson, South Carolina, and owner of an unregistered antenna structure utilized by station WAIM-AM, for willful and repeated violation of Section 17.4(a) of the Commission's Rules ("Rules").

2. On May 7, 2003, the Commission's Atlanta, Georgia Office ("Atlanta Office") issued a Notice of Apparent Liability for Forfeiture ("NAL") to Palmetto in the amount of five thousand dollars (\$5,000). Palmetto filed a response on June 2, 2003.

II. BACKGROUND

3. On April 16, 2003, an agent from the Commission's Atlanta Office conducted an inspection of station WAIM-AM's antenna structure. The agent checked the Commission's Antenna Structure Registration Database and determined that the structure was not registered. Palmetto owns the antenna structure and station WAIM-AM's license requires that the antenna structure be painted and lighted because it is over 200 feet tall.

4. On April 16, 2003, the agent also inspected station WAIM-AM's Emergency Alert System ("EAS") equipment. When asked to produce station logs for the previous three months, station personnel could not provide any records of EAS tests or activations, reasons for failure to receive and conduct such tests, or any entries showing EAS equipment had been removed from service for repair. Further, in response to a direct question by the agent, the station's general manager stated that he could not remember when the station had last conducted an EAS test. Based upon the station manager's

1 47 C.F.R. § 17.4(a).

2 See Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200332480024 (Enf. Bur., Atlanta Office, May 7, 2003).

contemporaneous statements and the absence of any required records, the agent concluded that station WAIM-AM had not conducted either weekly or monthly tests for the immediate prior three-month period. On May 7, 2003, the Atlanta Office issued an *NAL* to Palmetto for willful and repeated violation of Sections 11.61(a) and 17.4(a) of the Rules. In its response, Palmetto claims that, contrary to the allegations contained in the *NAL*, it does monitor and conduct both weekly and monthly tests of the EAS, but acknowledges that it was unable to produce supporting logs. Palmetto states that an employee accidentally discarded the logs. Palmetto supplemented its response with a sworn statement by its general manager concerning the EAS testing. Further, Palmetto admits that its antenna structure is not registered, but does not agree that the violation was willful or repeated. Finally, Palmetto discusses its poor financial situation and provides copies of its 2000, 2001, and 2002 tax returns, presumably to demonstrate its inability to pay the forfeiture.

### III. DISCUSSION

5. The forfeiture amount in this case was proposed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),<sup>3</sup> Section 1.80 of the Rules,<sup>4</sup> and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.<sup>5</sup> In examining Palmetto’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.<sup>6</sup>

6. Section 11.61 of the Rules requires broadcast stations to (a) conduct monthly EAS tests from designated local primary EAS sources and retransmit the monthly test within 60 minutes of its receipt and (b) conduct tests of the EAS header and EOM codes at least once a week at random days and times.<sup>7</sup> The Atlanta Office found that Palmetto had failed to conduct EAS tests for at least the three-month period prior to the inspection based upon its failure to be able to produce EAS logs for that time-period and the general manager’s contemporaneous statement that he “could not remember the last time the station had conducted EAS tests.” In its response, Palmetto’s general manager takes issue with the assertion in the *NAL* as to the meaning of his statement given at the time of the inspection. Palmetto claims that, although it did monitor and conduct both weekly and monthly EAS tests, it was unable to produce the requested logs because they had been inadvertently discarded.<sup>8</sup> Palmetto supplemented its response with a sworn statement of its general manager indicating that it did conduct weekly and monthly tests of the EAS system as of the date of the inspection and for at least the three months immediately prior to the inspection. After reviewing the record in this case, we find that the ambiguity of the contemporaneous statement does not support a finding that Palmetto willfully and repeatedly violated Section 11.61 by failing to conduct weekly and monthly tests. Therefore, we cancel the portion of the

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<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> 47 C.F.R. § 1.80.

<sup>5</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>6</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>7</sup> 47 C.F.R. § 11.61. The required monthly and weekly tests are required to conform with the procedures in the EAS Operational Handbook. *See also Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, EB Docket No. 01-66, *Report and Order*, FCC 02-64 (Feb. 26, 2002); 67 Fed Reg 18502 (April 16, 2002) (effective May 16, 2002, the required monthly EAS test must be retransmitted within 60 minutes of receipt).

<sup>8</sup> Broadcast stations are required to retain station logs and produce them upon request by the FCC. Such logs must include entries that, among other things, contain EAS tests that are received and transmitted. The logs must be retained for two years. Palmetto should, therefore, have had the logs available. *See, generally*, § 73.1860.

forfeiture proposed for violation of Section 11.61(a) of the Rules.

7. Section 17.4(a) of the Rules requires that the owner of any proposed antenna structure that requires notice of proposed construction to the Federal Aviation Administration (“FAA”) must register the structure with the Commission. Palmetto’s antenna structure required notice to the FAA, and thus Commission registration, because the structure exceeded 200 feet in height above ground.<sup>9</sup> As of April 16, 2003, the date of the inspection, Palmetto had failed to register its antenna structure. In fact, Commission records indicate that the antenna structure still has not been registered. Although Palmetto claims that it had other priorities, that the Commission’s Antenna Structure Registration Database is not user-friendly, and that it had difficulty obtaining the FAA aeronautical study number, these circumstances do not justify Palmetto’s failure to register its antenna structure.

8. Palmetto disagrees that its violation of Section 17.4(a) of the Rules was willful or repeated arguing that it has attempted several times to register its antenna structure. Because Palmetto was admittedly aware of the requirement to register its antenna structure but failed to do so, we find Palmetto’s failure to register its antenna structure to be willful<sup>10</sup> and repeated<sup>11</sup> violations of Section 17.4(a) of the Rules.

9. Finally, Palmetto provides its 2000, 2001, and 2002 federal income tax returns presumably to demonstrate its inability to pay the forfeiture. After reviewing the documentation, we conclude that reduction of the remaining \$3,000 forfeiture to \$2,000 is warranted in this case.

10. Palmetto has stated that its antenna structure still is not registered and our search of the Commission’s Antenna Structure Registration Database confirms that it is not registered as of August 25, 2004. Accordingly, we require, pursuant to Section 308(b) of the Act,<sup>12</sup> that Palmetto report to the Enforcement Bureau no more than thirty (30) days following the release of this *Order* how it has achieved compliance with Section 17.4 of the Rules for its antenna structure. Palmetto’s report must be submitted in the form of an affidavit signed by an officer or director of Palmetto.

#### IV. ORDERING CLAUSES

11. 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>13</sup> Palmetto Broadcasting Company, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of two thousand dollars (\$2,000) for its willful and repeated failure to register its antenna structure in violation of Section 17.4(a) of the Rules.

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<sup>9</sup> 47 C.F.R. § 17.7.

<sup>10</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’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act . . . .” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

<sup>11</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>12</sup> 47 U.S.C. § 308(b).

<sup>13</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

12. **IT IS FURTHER ORDERED** that, pursuant to Section 308(b) of the Act, Palmetto must submit the report described in Paragraph 10, above, within no more than thirty (30) days following the release of this *Order*, to Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Room 7-A728, Washington, D.C. 20554, Attention: Jacqueline Ellington, Esq.

13. 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>14</sup> 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, 525 West Monroe, 8<sup>th</sup> 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, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>15</sup>

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Palmetto Broadcasting Company, Inc., 2203 Old Williamston Rd., Anderson, South Carolina 29621.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>14</sup> 47 U.S.C. § 504(a).

<sup>15</sup> See 47 C.F.R. § 1.1914.