

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

In the Matter of	)	
	)	
WSJM, Inc.	)	File No. EB-02-DT-1240
	)	
Licensee of AM Radio Station WGMY, South Haven, Michigan	)	NAL/Acct. No. 200332360005
	)	
	)	FRN 0007171432

**FORFEITURE ORDER**

**Adopted: September 8, 2004**

**Released: September 10, 2004**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of twelve thousand eight hundred dollars (\$12,800) to WSJM, Inc. (“WSJM”), licensee of Station WGMY (AM), South Haven, Michigan, for willful violation of numerous sections of the Commission’s Rules (“Rules”). The noted violations involve, respectively: 1) failure to maintain required records, in violation of Sections 73.1820(a)(1)(i), 73.1820(a)(1)(iii) and 73.1870(c)(3) of the Rules;<sup>1</sup> 2) failure to make required measurements or conduct required monitoring regarding EAS monitoring sources, EAS tests, and observation of antenna structures’ lights, in violation of Sections 11.52(d), 11.61(a)(2)(i)(A) and 17.47(a)(1);<sup>2</sup> 3) failure to file required forms or information regarding the registration of two antenna structures, in violation of Section 17.4(a);<sup>3</sup> and 4) failure to exhibit red obstruction lighting from sunset to sunrise, in violation of Section 17.51(a).<sup>4</sup>

**II. BACKGROUND**

2. On September 23, 2002, the Commission’s Detroit Office received information that the top flashing obstruction lights on each of two antenna structures and the side lights on one of the two antenna structures located at the corner of Wells and Dunkey Streets in South Haven, Michigan had not been operating for two months. The Detroit Office searched the Antenna Structure Registration database and did not find any registered structures in the area reported. The Detroit Office requested that the South Haven Police Department observe the antenna structure lights after sunset to determine if the complaint was still valid.

<sup>1</sup>47 C.F.R. §§ 1820(a)(1)(i), 73.1820(a)(1)(iii) and 73.1870(c)(3).

<sup>2</sup>47 C.F.R. §§ 11.52(d), 11.61(a)(2)(i)(A) and 17.47(a)(1).

<sup>3</sup>47 C.F.R. § 17.4(a).

<sup>4</sup>47 C.F.R. § 17.51(a).

3. On September 24, 2002, the South Haven Police Department confirmed the antenna structure light outages. An agent from the Detroit Office contacted the Federal Aviation Administration (“FAA”), which notified WSJM of the light outage report and issued a Notice to Airmen (“NOTAM”).

4. On November 20, 2002, agents from the Detroit Office conducted an inspection of WSJM’s antenna structures. The agents determined that all required structure lighting was operational at that time, but found that no Antenna Structure Registration Numbers were posted. On November 21, 2002, agents from the Detroit Office conducted an additional inspection, and found numerous violations of the Commission’s Rules. On December 5, 2002, the Detroit Office issued a Notice of Violation (“NOV”) to WSJM for these rule violations. On December 16, 2002, the Detroit Office received a reply which indicated the corrective steps that WSJM had instituted in response to the NOV.

5. On April 17, 2003, the Detroit Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to WSJM, finding that the station willfully<sup>5</sup> and repeatedly<sup>6</sup> violated the Commission’s Rules, and proposed a forfeiture in the amount of nineteen thousand dollars (\$19,000).<sup>7</sup> In particular, the Detroit Office determined that WSJM had failed to maintain required records, in violation of Sections 73.1820(a)(1)(i), 73.1820(a)(1)(iii) and 73.1870(c)(3) of the Rules; that it had failed to make required measurements or conduct required monitoring regarding EAS monitoring sources, EAS tests, and observation of antenna structures’ lights, in violation of Sections 11.52(d), 11.61(a)(2)(i)(A) and 17.47(a)(1); that it had failed to file required forms or information regarding the registration of two antenna structures, in violation of Section 17.4(a); and that it had failed to exhibit red obstruction lighting from sunset to sunrise, in violation of Section 17.51(a).

6. WSJM filed a response to the NAL on May 19, 2003. In its response, WSJM does not dispute the NAL’s findings. Nevertheless, as detailed below, WSJM seeks a reduction of the proposed forfeiture, based on its arguments that: 1) it instituted prompt remedial action to correct the violations; 2) its failure to register each of its antenna structures resulted from a “single mistake of fact” by its chief engineer; 3) WSJM was only monitoring one EAS source because an antenna from one of its EAS monitors had become dislodged; and 4) the station has a history of overall compliance with the Commission’s Rules.

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<sup>5</sup> Section 312(f)(1) of the Act, 47 U.S.C. 312(f)(1), which applies to 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, 4388 (1991).

<sup>6</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>7</sup>See *Notice of Apparent Liability for Forfeiture*, NAL/Acct. 200332360005 (Enf. Bur., Detroit Office, released April 17, 2003).

### III. DISCUSSION

7. 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>8</sup> Section 1.80 of the Rules,<sup>9</sup> 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) (“*Forfeiture Policy Statement*”). In examining WSJM’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>10</sup>

8. As stated above, WSJM does not dispute the *NAL*’s conclusion that WSJM violated the Commission’s rules. Instead, WSJM seeks reduction of the proposed forfeiture, first on the basis that it took prompt action to correct all of the violations noted in the Detroit Office’s *NAL*. For example, with regard to its proposed forfeiture for failure to comply with prescribed antenna structure lighting in violation of Section 17.51(a) of the Rules, WSJM concedes that the lights were out on two of its antenna structures “at some previous point,” but insists that it took steps to repair the lights “immediately upon being notified of the outage,” and that the lights were repaired and operational when the inspection occurred.<sup>11</sup> WSJM’s remedial actions, however, to correct promptly violations *after* they have been identified by a Commission agent are expected, and do not warrant a reduction in the forfeiture amount.<sup>12</sup>

9. WSJM also requests a reduction of the proposed forfeiture on the basis that its failure to register each of its two antenna structures in violation of Section 17.4(a) of the Rules stemmed from a “single mistake of fact” by its chief engineer. According to WSJM, its chief engineer mistakenly believed that the structures were less than 200 feet in height, and therefore, were below the threshold required to register the structures as obstructions. WSJM further argues that because the two structures are located at the same site and are part of a directional array, the Detroit Office should have levied a fine for only one antenna structure registration violation. It is well-established that WSJM, as a licensee, is accountable for its chief engineer’s errors and ultimately, is responsible for compliance with the Commission’s requirements.<sup>13</sup> Nevertheless, we agree that, because the two antenna structures are located at the same site, it is appropriate to deal with WSJM’s error as a single registration violation. Accordingly, we reduce the total forfeiture amount by three thousand dollars (\$3,000).

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<sup>8</sup> 47 U.S.C. § 503(b).

<sup>9</sup> 47 C.F.R. § 1.80.

<sup>10</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>11</sup> Based on the record, WSJM was first notified of the light outages because an agent from the Commission’s Detroit Office contacted the Federal Aviation Administration, which in turn notified WSJM of the outage report and issued a NOTAM. *See* ¶ 3, *supra*.

<sup>12</sup> *See, e.g., AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002); *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994); *Station KGVV, Inc.*, 42 FCC 2d 258, 259 (1973).

<sup>13</sup> *See, e.g., Odino Joseph*, 18 FCC Rcd 16522, 16524 ¶ 8 (Enf. Bur. 2003); *South Central Communications Corp.*, 18 FCC Rcd 700, 702-03 ¶ 9 (Enf. Bur. 2003).

10. WSJM also argues that at the time of the Detroit Office's inspection, it was only monitoring one EAS source (instead of the requisite two sources) because an antenna for one of its EAS monitors had become dislodged without its knowledge. According to WSJM, the proposed forfeiture for violation of Section 11.52(d) of the Rules should be reduced because WSJM was unaware of the problem with the antenna, and reinstalled it immediately upon discovery of the violation. We disagree. As noted above, WSJM, as a licensee, is responsible for ensuring compliance with the Commission's Rules,<sup>14</sup> including the requirement that the station monitor two EAS sources. Further, WSJM should have been receiving and logging EAS tests from both EAS sources and thus, should have been aware that it was not receiving the second source. That WSJM may have overlooked a dislodged antenna does not mitigate or excuse WSJM's violations, and thus we do not find that reduction of the proposed forfeiture amount is warranted on this basis.

11. Finally, WSJM contends that the proposed forfeiture should be reduced in light of its overall history of compliance with the Commission's Rules. After considering WSJM's record of compliance, we conclude that although WSJM willfully<sup>15</sup> violated the Commission's Rules, a reduction of the remaining forfeiture amount (sixteen thousand dollars (\$16,000) as reduced) to twelve thousand eight hundred dollars (\$12,800) is appropriate.<sup>16</sup>

#### IV. ORDERING CLAUSES

12. 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>17</sup> WSJM, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twelve thousand eight hundred dollars (\$12,800) for willfully violating Sections 11.52(d), 11.61(a)(2)(i)(A), 17.4(a), 17.47(a)(1), 17.51(a), 73.1820(a)(1)(i), 73.1820(a)(1)(iii), and 73.1870(c)(3) of the Commission's Rules.

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>18</sup> Payment of the forfeiture may be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FCC Registration Number ("FRN") referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, 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," account number 1165259. Requests for full payment

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<sup>14</sup>See note 13, *supra*.

<sup>15</sup> While the *NAL* also concluded that WSJM's violations were "repeated," we need not address that finding in light of the willful nature of WSJM's admitted violations. See, e.g., *Southern Broadcasting Co.*, 6 FCC Rcd 4387, 4388 (1991) (in issuing a forfeiture pursuant to 47 U.S.C. § 503(b) of the Act, we are only required to find either a "willful" or "repeated" violation). See also note 5, *supra*.

<sup>16</sup>See *Max Media of Montana*, 18 FCC Rcd 21375, 21378 (Enf. Bur. 2003) (finding that a licensee's history of compliance with Commission regulations warranted a reduction of the proposed forfeiture); see also *South Central Communications Corp.*, 18 FCC Rcd 700, 701, 703 ¶¶ 6, 9 (Enf. Bur. 2003).

<sup>17</sup>47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>18</sup>47 U.S.C. § 504(a).

under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>19</sup>

14. **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 Mr. Gayle Olson, President/General Manager, WSJM, Inc., P.O. Box 107, St. Joseph, MI, 49085, and to WSJM, Inc.'s attorneys, David D. Oxenford, Esquire, and Paul A. Cicelski, Esquire, of Shaw Pittman LLP, 2300 N Street, N.W., Washington, D.C. 20037-1128.

**FEDERAL COMMUNICATIONS COMMISSION**

David H. Solomon  
Chief, Enforcement Bureau

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<sup>19</sup>See 47 C.F.R. § 1.1914.