

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

In the Matter of)	
)	
JMK Communications, Inc.)	File Number: EB-03-CF-334
Licensee of Station WPWC(AM))	
Dumfries-Triangle, VA)	NAL/Acct. No. 200432340004
)	FRN 0006-1615-09
)	

FORFEITURE ORDER

Adopted: December 22, 2004

Released: December 27, 2004

By the Assistant Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of fourteen thousand dollars (\$14,000) to JMK Communications, Inc. (“JMK”), licensee of radio station WPWC(AM), Dumfries, Virginia, for willful and repeated violation of Sections 73.1745(a), 73.3526(e)(5), and 73.3526(e)(12) of the Commission's Rules (“Rules”).¹ The noted violations involve JMK’s operation of station WPWC(AM) at unauthorized power levels and its failure to place the most current ownership report and a list of programs that have provided WPWC’s most significant treatment of community issues in the public inspection file.

2. On March 4, 2004, the District Director of the Commission’s Columbia, Maryland Office (“Columbia Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to JMK for a forfeiture in the amount of twenty-two thousand dollars (\$22,000).²

II. BACKGROUND

3. On July 2, 2003, an agent from the Commission’s Columbia Office conducted an inspection of station WPWC. The agent found that the EAS receiver was not tuned to the proper station and the reception of the second station was very noisy. The agent noted that the EAS equipment was installed at the station’s unattended transmitter, and noted its monitoring and transmitting functions were not available to the station’s operators at either WPWC’s main studio in Annandale, Virginia or its secondary studio in Woodbridge, Virginia. The agent also found that, according to the station logs, WPWC operated with its daytime power and antenna during nighttime hours. The authorized daytime power is 1080 watts while the authorized nighttime power is 540 watts. The station’s logs indicated that WPWC changed to its nighttime power level and antenna at 8:30 p.m. EST instead of the authorized 8:15 p.m. EST on May 4, 2003 and May 8 through May 19, 2003. The agent discovered that JMK’s public file

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

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200432340004 (Enf. Bur., Columbia Office, released March 4, 2004).

included neither station WPWC's most recent ownership report nor a current and complete issues/programs list. On August 7, 2003, the Columbia Office sent a Letter of Inquiry ("LOI") to JMK to clarify issues raised during the inspection. JMK responded to the LOI on August 22, 2003. On March 4, 2004, the Columbia Office issued the instant *NAL* to JMK, to which JMK responded on April 14, 2004. In its response to the *NAL*, which includes a declaration made under the penalty of perjury by the station's chief engineer, Alfred Hammond, JMK seeks cancellation or reduction of the forfeiture.

III. DISCUSSION

4. 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 JMK'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

5. Section 11.35(a) of the Rules requires that broadcast stations have EAS equipment installed so that the monitoring and transmitting functions are available during the times the stations and systems are in operation. The investigating agent found that JMK had violated Section 11.35(a) of the Rules because the EAS monitoring and transmitting functions were not available to the station operators at their normal duty positions. However, as JMK points out, WPWC's EAS equipment is installed at the station's transmitter site and operates automatically with the capability of a remote control override. WPWC's EAS set-up is consistent with Section 11.51(m) of the Rules which permits automatic operation of the EAS system by broadcast stations that use remote control. Further, although the *NAL* appears to cite JMK for not monitoring its primary EAS source and having its EAS equipment improperly tuned to its secondary EAS source, no separate violation of Section 11.52(d) of the Rules⁶ was noted. We agree with JMK that there was no violation of Section 11.35(a) of the Rules. Therefore, we cancel the portion of the forfeiture assessed for violation of Section 11.35(a) of the Rules and reduce the forfeiture amount by \$8,000.

6. Section 73.1745(a) of the Rules states, 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. The *NAL* found that JMK did not change station WPWC's operating power level from its authorized daytime power of 1080 watts to its authorized nighttime power of 540 watts at the time required by its station authorization. The *NAL* found that on May 4, 2003, and from May 8 to May 19, 2003, WPWC changed from nighttime to daytime power at 8:30 p.m. EST instead of the authorized 8:15 p.m. EST. In his declaration, Mr. Hammond states that the changeover to nighttime power and antenna is controlled by a reliable computer and is not linked to manual logging. Thus, Mr. Hammond claims, notwithstanding an inadvertent error in preparing the logs, the nighttime power limits were not exceeded.

7. At the time the investigating agent reviewed the station logs, he noted that the transmitter operating parameters were the same day after day. The agent noted that blanks on the pre-printed log form were completed with meter readings and a statement that tower lights were functioning properly

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ 47 C.F.R. § 11.52(d) (requires broadcast stations to monitor two EAS sources).

prior to copying the forms for use in the log. He noted that the dates and times of the meter readings and entries relating to the EAS were then manually added. He also noted that the individual pages were then signed by Mr. Hammond. In its LOI to JMK, the Columbia Office asked JMK, "Do you acknowledge that the above described documents, presented as the station logs, showing unvarying operating parameters do not accurately reflect the station operation?" In response, JMK stated, "[w]e respectfully do not agree that these documents do not accurately reflect the station operation." The District Director interpreted this statement as an affirmation that the station logs were accurate. In its response to the *NAL*, supported by Mr. Hammond's declaration, JMK asserts that the logs were in error. Initially, JMK asserted that WPWC's station logs were accurate. Now, JMK asserts that the station logs are inaccurate. After considering JMK's response to the LOI and the agent's contemporaneous observation of the logs, the District Director considered the station logs to be accurate. We accept that determination. Thus, we find that on May 4, 2003, and May 8 through May 19, 2003, JMK operated station WPWC at unauthorized power levels. Alternatively, JMK argues that an occasional lapse of fifteen minutes hardly warrants imposition of the maximum forfeiture amount that would apply to a far more serious situation as when a station fails to reduce power at all. We note that the base forfeiture amount for each violation of Section 73.1745(a) is \$4,000. JMK's records indicate that it violated Section 73.1745(a) of the Rules over 10 times in May, 2003. We see no reason to reduce the forfeiture and thus, we sustain the imposition of one \$4,000 forfeiture for these violations.

8. Section 73.3526(e)(5) of the Rules requires commercial broadcast stations to place a copy of the most recent, complete ownership report in the public inspection file. Although JMK states that it had filed the latest ownership report with the Commission, JMK admits that the latest ownership report was not in the public file. JMK further states that the file did contain the previous report, which was identical in substance to the latest report. JMK also asserts that the purpose of the public file rule, which is to ensure public access to current information, was served because members of the public looking at the public file would have been able to get current information from the previous year's report. We do not agree and conclude that the public file rule was violated because it requires that a copy of the latest ownership report be included in the public inspection file and it was not.

9. Section 73.3526(e)(12) of the Rules requires commercial broadcast stations to place in the public inspection file every three months a list of programs that have provided the station's most significant treatment of community issues during the preceding three months. The rule also explains the information that the list should contain. JMK admits, and we conclude, that WPWC's public file contained an inadequately detailed issues/programs list.

10. Although JMK admits the two public file violations, JMK also argues that the proposed forfeiture amount is excessive in comparison to forfeiture amounts that have been assessed for more severe public file infractions. In support of this contention, JMK cites to *Maria Salazar*, 17 FCC Rcd 14090 (2002), *Riverside Broadcasting, Inc.*, 15 FCC Rcd 18322 (2000), and *Telemidia Broadcasting, Inc.*, 17 FCC Rcd 14064. In *Salazar* and *Riverside*, much like in the instant case, the base forfeiture amount was assessed for violations of the public inspection file rules. Our treatment of JMK's violation of the public file rules is consistent with our treatment of the violations in the *Salazar* and *Riverside* cases. In *Telemidia*, the Chief of the Investigations and Hearings Division ("IHD") of the Enforcement Bureau found that, although *Telemidia* had violated Section 73.3526 of the Rules by failing to provide the complete public inspection file upon request, its violation was the result of an oversight caused by *Telemidia* being in the midst of a main studio remodeling at the time of the request. The Chief of IHD determined that, based on the facts of the case, an admonishment was appropriate in *Telemidia*. Here we have no finding of oversight and no chaos of a studio remodeling at the time the public file was requested, yet, required information was not in the public file. Accordingly, we do not believe that the sanction for JMK's behavior should be limited to an admonishment.

11. We have examined JMK's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement*. As a result of our review, we conclude that JMK willfully⁷ and repeatedly⁸ violated Sections 73.1745(a), 73.3526(e)(5), and 73.3526(e)(12) and impose a monetary forfeiture in the amount of \$14,000.

III. 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,⁹ JMK Communications, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of fourteen thousand dollars (\$14,000) for willful and repeated violation of Sections 73.1745(a), 73.3526(e)(5), and 73.3526(e)(12) of the 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.¹⁰ Payment of the forfeiture must 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 FRN No. 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, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank "Bank One," and account number 1165259. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹¹

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by certified mail, return receipt requested, to JMK Communications, Inc., 4525 Wilshire Boulevard, Los Angeles, California 90010, and its counsel, Peter Gutmann, Esq., at Womble Carlyle Sandridge & Rice, PLLC, 1401 Eye Street, NW, 7th Floor, Washington, DC 20005.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau

⁷ 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).

⁸ 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 Co.* at 4388 (1991).

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

¹⁰ 47 U.S.C. § 504(a).

¹¹ See 47 C.F.R. § 1.1914.