

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

In the Matter of)	
)	File No. EB-03-CF-472
WKLC, Inc.)	
WJYP(AM))	NAL/Acct. No. 200432340002
St. Albans, West Virginia)	
)	FRN: 0002-0120-03

MEMORANDUM OPINION AND ORDER

Adopted: August 10, 2005

Released: August 12, 2005

By the Acting Chief, Enforcement Bureau:

1. In this *Memorandum Opinion and Order* (“*Order*”), we cancel a proposed monetary forfeiture issued to WKLC, Inc. (“WKLC”)¹ for alleged willful and repeated violation of the Commission’s Rules (“Rules”) requiring the registration and painting of antenna structures.² Based on the information now before us, the Enforcement Bureau (Bureau) finds that no forfeiture should be imposed, contingent upon WKLC fulfilling the condition imposed herein.

A. Background

2. WKLC, Inc. is the licensee of WJYP (AM) and the owner of the station’s antenna structure located at approximately 38° 23’ 43” North Latitude and 82° 51’ 00” West Longitude, near St. Albans, West Virginia. On July 23, 2003, as part of ongoing inspections of radio operations, the Bureau investigators observed apparent violations of the Commission’s rules requiring the registration and painting of antenna structures. Specifically, the investigator noted that the tower at the listed coordinates had never been painted. Moreover, the investigator noted that the tower was a replacement for the originally registered tower and that the replacement was not registered. Accordingly, the Bureau issued a *Notice of Apparent Liability for Forfeiture*, proposing a \$13,000 forfeiture for the alleged violations.

3. WKLC, Inc. responded to the *NAL* on March 29, 2004. In its response, WKLC stated that the antenna structure is exempt from the Commission’s registration and painting requirements because the structure itself is less than 200 feet in height. It bases this argument on a declaration provided by Fred A. Francis, President of Francis Technical Services, the contract engineer for Station WJYP. Mr. Francis declares that an employee of A&B Communications climbed the “WYYP” (sic) tower and dropped a 100 foot tape measure, while another member of his crew placed a mark on the tower at that level. The two employees then determined that the measurement from the mark to the ground was 97 feet 7 inches. Therefore, states Mr. Francis, the measurement of the tower is 197 feet 7 inches.

4. Mr. Francis further declares that the tower consists of twenty 10-foot sections that sit on a two-foot concrete pier with a one-foot insulator. The tower sections are each 10 feet in height, but 3.5 inches of each section end inserts into the next section for bolting purposes; therefore, he states, 3.5

¹ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200432340002 (Enf. Bur., Columbia, MD Office, released February 27, 2004).

² Antenna structures over 200 feet are required to be registered, painted and lighted. 47 C.F.R. §§ 17.4(a)(2), 17.50.

inches in tower height are lost for each section. For twenty sections, Mr. Francis calculates a total loss of five feet 10 inches; in addition, the tower has a top plate, which he states adds an additional 3 inches to the height. Calculating the loss for each section plus the top plate, Mr. Francis states that the tower measures 197 feet 7 inches.

B. Discussion

5. On the basis of the new information provided by WKLC in its response to the Bureau's *NAL*, we conclude that actual height of the station's new replacement antenna structure, which was constructed in 2002, is 197 feet, 5 inches.³ Because the structure measures less than 200 feet, it does not require notice of proposed construction to the Federal Aviation Administration and, thus, is not subject to the Commission's antenna structure registration rules. For the same reason, the structure also is not subject to the painting requirements of Section 17.50 of the Commission's Rules. Accordingly, those rule sections were not violated by the structure in question and no forfeiture should be imposed.

6. Although we conclude that no violation of Sections 17.4(a)(2) and 17.50 of the Rules has occurred, we have found no information in the Commission records to indicate that WKLC, Inc. ever sought authorization to construct a replacement tower at a new height. Replacing an authorized tower with a tower of different height at the same location requires prior approval by the Commission. *See* Section 73.1690(b)(1) of the Rules.⁴

7. Accordingly, we require, pursuant to Section 308(b) of the Communications Act of 1934, as amended, that WKLC submit a report to the Enforcement Bureau within 30 days of the release of this *Order* demonstrating that it has filed an FCC Form 301 application for construction permit specifying the correct height of the tower and an FCC Form 302 application for license. WKLC's report must be submitted in the form of an affidavit or declaration, under penalty of perjury, and signed by an officer or director of the declarant. WKLC should note that its noncompliance could result in enforcement action. Further, we **ADMONISH** WKLC, Inc. for its failure to report the replacement of its original antenna structure.

C. Ordering Clauses

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 504(b) of the Act and Section 1.80(f)(4) of the Rules,⁵ the instant *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200432340002, **IS CANCELED**.

9. **IT IS FURTHER ORDERED** that WKLC, Inc. is hereby **ADMONISHED** for its failure to report the replacement of its original antenna structure.

10. **IT IS FURTHER ORDERED** that, pursuant to Section 308(b) of the Act, WKLC, Inc. must submit the report described in paragraph seven (7) above no later than thirty (30) days from the release date of this *Order* to: Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Washington, D.C. 20554, Attention: Susan Magnotti, Esquire.

³ Although WKLC's antenna contractor measured and calculated 197 feet 7 inches, our calculations, based on the information provided, show that the antenna structure measures 197 feet 5 inches.

⁴ 47 C.F.R. § 73.1690(b)(1).

⁵ 47 U.S.C. § 504(b); 47 C.F.R. § 1.80(f)(4).

11. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail, return receipt requested, to Lynn Martin, President, WKLC, Inc., Station WJYP(AM) c/o LM Communications, Inc., 100 Kanawha Terrace, St. Albans, West Virginia 25177, and to its counsel, Sally A. Buckman, Leventhal Senter & Lerman PLLC, 2000 K Street, N.W., Suite 600, Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Acting Chief, Enforcement Bureau