

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

In the Matter of	)	
	)	
JMK Communications, Inc.	)	File Number: EB-07-HL-099
	)	
Licensee of AM Broadcast Station KREA	)	NAL/Acct. No.: 200732860001
Honolulu, HI	)	FRN: 0007309503
Facility ID 39773	)	

**FORFEITURE ORDER**

**Adopted: March 27, 2008**

**Released: March 31, 2008**

By the Regional Director, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of four thousand dollars (\$4,000) to JMK Communications, Inc. (“JMK”), licensee of AM Broadcast Station KREA, in Honolulu, Hawaii, for willful and repeated violations of Section 73.44(b) of the Commission’s Rules (“Rules”).<sup>1</sup> On August 7, 2007, the Enforcement Bureau’s Honolulu Resident Agent Office issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) in the amount of \$4,000 to JMK for failing to ensure that emissions removed by more than 75 kHz from the KREA fundamental frequency of 1540 kHz were attenuated 80 dB below the unmodulated carrier level. In this *Order*, we consider JMK’s arguments that it was not responsible for the violation, and that it has taken extensive remedial actions to cure the violation.

**II. BACKGROUND**

2. On April 12, 2007, the Honolulu Office received a complaint alleging that an AM broadcast station on 1540 kHz was causing interference on 1810 kHz and that the interference was a result of spurious emissions. 1810 kHz is authorized for primary use by stations in the Amateur Radio Service.<sup>2</sup>

3. On April 17, 2007, Honolulu agents inspected AM Broadcast Station KREA, which is licensed to operate on 1540 kHz in Honolulu, Hawaii. The agents employed a calibrated spectrum analyzer and an external magnetically mounted antenna to measure spurious emissions from KREA on 1810 kHz, attenuated -60 dB referenced to the KREA carrier on 1540 kHz.

4. A Notice of Violation (“*NOI*”) was issued to JMK Communications, Inc., licensee of AM Broadcast Station KREA, on April 26, 2007, citing JMK for violation of Section 73.44(b) of the Rules.<sup>3</sup> JMK replied to the Notice via letter dated May 15, 2007. In its response, JMK acknowledged the spurious emissions, and stated that they had remedied the problem.

5. On May 22, 2007, a Honolulu agent again inspected AM Broadcast Station KREA. The Honolulu agent employed a calibrated spectrum analyzer and an external magnetically mounted antenna

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<sup>1</sup> 47 C.F.R. § 73.44(b).

<sup>2</sup> 47 C.F.R. §§ 97.301, 2.106.

<sup>3</sup> 47 C.F.R. § 73.44(b). As KREA is licensed to operate at 5000 watts, the emissions are required to be attenuated 80 dB.

and measured spurious emissions from KREA on 1810 kHz, attenuated -59 dB referenced to the KREA carrier on 1540 kHz. The agent spoke to the local KREA contract engineer, who stated that the installed filtering had failed and needed to be replaced. The agent also spoke with the individual who had designed and installed the rejection filters for the station and he confirmed that the installed filters had failed, and stated that further repairs were pending.<sup>4</sup>

6. On July 9, 2007, a Honolulu agent again inspected AM Broadcast Station KREA. The agent employed a calibrated spectrum analyzer and an external magnetically mounted antenna and measured spurious emissions from KREA on 1810 kHz, attenuated -55 dB referenced to the KREA carrier on 1540 kHz.

7. On July 18, 2007, the Honolulu Office received another e-mail complaint alleging interference to Amateur Radio Service operations on 1810 kHz. The complaint stated that the spurious emissions had continued unabated.

8. On August 7, 2007, the Honolulu Office issued a *NAL* in the amount of \$4,000 to JMK, finding that JMK apparently willfully and repeatedly violated Section 73.44(b) of the Rules by failing to adequately attenuate the spurious emissions on 1810 kHz.<sup>5</sup> JMK filed a response ("*Response*") on September 6, 2007, and then supplemented that response ("*Supplemental Response*") on December 11, 2007. In its *Response*, JMK argued that it is not responsible for the violation, but that it would be willing to work with the Honolulu Office to resolve the issue. After working with the Honolulu Office for four days in October, 2007, JMK filed its *Supplemental Response*, which reiterated the arguments of its *Response*, but supplied new, and conflicting, engineering data and information.

### III. DISCUSSION

9. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>6</sup> Section 1.80 of the Rules,<sup>7</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("*Forfeiture Policy Statement*").<sup>8</sup> 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 other such matters as justice may require.<sup>9</sup>

10. Section 73.44(a) of the Rules requires that "[t]he emissions of stations in the AM service shall be attenuated in accordance with the requirements specified in paragraph (b) of this section."<sup>10</sup> Section 73.44(b) of the Rules requires that "[e]missions removed by more than 75 kHz (from the carrier) must be attenuated at least  $43 + 10 \text{ Log (Power in watts)}$  or 80 dB below the unmodulated carrier level, whichever is the lesser attenuation...."<sup>11</sup> Because AM Broadcast Station KREA is licensed to operate on

<sup>4</sup> JMK disputes that the filters failed. See *Response* at 1; *Supplemental Response* at 1.

<sup>5</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732860001 (Enf. Bur., Western Region, Honolulu Resident Agent Office, released August 7, 2007).

<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> 47 C.F.R. § 1.80.

<sup>8</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>9</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>10</sup> 47 C.F.R. § 73.44(a).

<sup>11</sup> 47 C.F.R. § 73.44(b).

1540 kHz, at 5000 watts, the emissions on 1810 kHz must be attenuated 80 dB. The frequency 1810 kHz is not assigned for broadcast use, and the station's emissions on 1810 kHz are impacting primary Amateur Radio Service use. On April 26, 2007, JMK received a *NOV* from the Honolulu Office notifying JMK that it is was operating in violation of Section 73.44(b) by failing to ensure that its emissions on 1810 kHz were attenuated 80 dB. Two subsequent investigations by Honolulu agents, on May 22, 2007, and July 9, 2007, revealed KREA was producing spurious emissions on 1810 kHz, attenuated -59 dB, and -55 dB, respectively.

11. JMK first argues that it is not responsible for the violation of Section 73.44(b). Specifically, in its *Response*, JMK states that in response to the *NOV*, its engineer "installed an extra shunt filter in order to ensure proper operation. He went on to take a series of measurements that demonstrate that even with the KREA transmitter turned completely off, there was still a significant signal detected at 1810 kHz." JMK argues, therefore, that the filtering it had installed had not failed, as suggested by the Honolulu Office in the *NAL*, "but rather that the 1810 kHz signal is originating from some other unrelated source." Consequently, JMK states that "KREA's operations do not appear to be the source of the unauthorized emissions cited in the [*NAL*]," and, therefore, asks that the forfeiture be cancelled. In its *Supplemental Response*, JMK states that "its own equipment is not the source, but only a passive contributor." JMK also reiterates that it "is not the cause of this problem." However, in the *Engineering Report* included with the *Supplemental Response*, the JMK engineer states that "the 1810 kHz signal remains and even increases in level slightly when the KREA transmitter is turned off . . . . The signal only goes away when the [KREA] transmitter AC power is disconnected or the [KREA antenna tuning unit ("ATU")] is disconnected from the tower." As the JMK engineer ran tests with the other AM stations he found that "[t]he only station which had any effect on the 1810 kHz signal while KREA was off is KNDI (1270 kHz, facility ID 37065) which eliminated the signal when their transmitter was turned off." However, after several different attempts to determine the cause of the emissions, the JMK engineer determined that it was "evident that the [KREA] transmitter itself may be playing some factor in this since the only way the spur is completely eliminated is with the [KREA] transmitter completely off or disconnected." When he contacted the designer of the KREA transmitter, the JMK engineer was told that "when the transmitter has power but the carrier is off [ . . . ], any external RF excitation which enters the PA stage can still be mixed with the carrier and transmitted since the transmitter is a very efficient mixer." The JMK engineer then calculated that "[u]sing direct ratios the power level for a 1810 kHz spur at -60 dB (using KREA's 5 kW as the reference) would require only 5 milliwatts into the tower." The JMK engineer then concluded that the "diplexing filters need to be redesigned to provide better isolation than what was required by the previous tube-type transmitter used at KREA."

12. Upon review of the *Response* and *Supplemental Response*, we find that the statements in the *Engineering Report* included in the *Supplemental Response* support the determination made by the Honolulu Office that KREA was causing spurious emissions on 1810 kHz. As JMK noted in its *NOV* response, the emission on 1810 kHz is apparently a "mixing product" caused by KREA's second harmonic (3080 kHz) and operations by KNDI on 1270 kHz. However, while KNDI may have passively contributed to the resulting emissions on 1810 kHz, given the frequencies and harmonics involved, KREA acknowledges that the offending signal on 1810 kHz "only goes away when then [KREA] transmitter AC power is disconnected or the [KREA] ATU is disconnected from the tower." Consequently, we find that KREA is responsible for the spurious emissions on 1810 kHz.

13. JMK also argues that the forfeiture should be cancelled because of the "highly responsive and responsible efforts and extraordinary expense" it has incurred to remedy this problem. We applaud JMK's efforts in this regard, and particularly commend the diligence of its engineer in trying to resolve the spurious emissions. However, the Commission has consistently held that a licensee is expected to correct errors when they are brought to the licensee's attention and that such correction is not grounds for a

downward adjustment in the forfeiture.<sup>12</sup> Because JMK has provided no evidence to show that it began its efforts to correct the spurious emission until after it was alerted to the problem by the FCC agents from the Honolulu Office, we are unable to reduce the forfeiture amount based on its remedial efforts.

14. We have examined the *Response* and the *Supplemental Response* to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that JMK willfully and repeatedly violated Section 73.44(b) of the Rules. Considering the entire record and the factors listed above, we find that neither reduction nor cancellation of the proposed \$4,000 forfeiture is warranted.

#### IV. ORDERING CLAUSES

15. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules, JMK Communications, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$4,000 for willfully and repeatedly violating Section 73.44(b) of the Rules.<sup>13</sup>

16. 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 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/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures.

17. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to JMK Communications, Inc., at its address of record, and Peter Gutmann, Esquire, its counsel of record.

#### FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch  
Regional Director, Western Region  
Enforcement Bureau

<sup>12</sup> See *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21875-76 (2002); *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994).

<sup>13</sup> 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.44(b).

<sup>14</sup> 47 U.S.C. § 504(a).