

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

In the Matter of)	
)	
Jackson Radio, LLC)	File No. EB-08-OR-0235
)	
Licensee of WJFN-AM)	NAL/Acct. No. 200932620004
Brandon, MS)	
Facility ID # 54820)	FRN 0012490520
)	

FORFEITURE ORDER

Adopted: July 29, 2009

Released: July 31, 2009

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of one thousand two hundred dollars (\$1,200) to Jackson Radio, LLC (“Jackson”), licensee of station WJFN-AM, in Brandon, Mississippi, for willful violation of Section 11.35 of the Commission’s Rules (“Rules”),¹ and repeated violation of Section 73.49 of the Rules.² The noted violations involve Jackson’s failure to have an operational Emergency Alert System (“EAS”) and failure to have an effective locked fence or other enclosures around the antenna structure.

II. BACKGROUND

2. On March 10 and March 11, 2009, in response to a complaint, agents from the Commission’s New Orleans Office of the Enforcement Bureau (“New Orleans Office”) inspected WJFN-AM’s antenna structure and found the gate on the fence surrounding the antenna structure unlocked. On March 12, 2009, the agents, accompanied by a station operator, inspected the main studio and antenna structure of WJFN-AM. At the studio, agents found the EAS without a power source and without any means to monitor its assigned inputs. The station log that requires that each test and activation of the EAS be logged was not available to the agents at the time of inspection. At the antenna structure, agents again found the gate on the fence surrounding the antenna structure unlocked.

3. On May 19, 2009, the New Orleans Office issued a *Notice of Apparent Liability for Forfeiture* to Jackson in the amount of fifteen thousand dollars (\$15,000), for the apparent willful violation of Section 11.35 of the Rules and willful and repeated violation of Section 73.49 of the Rules.³ Jackson submitted a response to the *NAL* requesting a reduction or cancellation of the proposed forfeiture.

III. DISCUSSION

¹ 47 C.F.R. § 11.35.

² 47 C.F.R. § 73.49.

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200932620004 (Enf. Bur., New Orleans Office, May 19, 2009) (“*NAL*”).

4. The proposed forfeiture amounts in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),⁴ Section 1.80 of the Rules,⁵ 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 Jackson’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.⁶

5. Section 11.35 of the Rules⁷ requires that EAS participants ensure that EAS Encoders, EAS Decoders and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the stations and systems are in operation. On March 12, 2009, agents from the New Orleans Office inspected the main studio of WJFN-AM when the station was in operation and found the EAS without a power source and without any means to monitor its assigned inputs. The station log that requires that each test and activation of the EAS be logged was not available to the agents at the time of inspection. Thus, the station was unable to provide evidence that its EAS had ever been operational.

6. In response to the *NAL*, Jackson submits a statement from the station manager that he was aware the EAS equipment was not functioning on the day of the inspection and had reported the malfunction to the engineer. The station manager states that he placed a sign on the EAS unit that it was malfunctioning and that the manufacturer had been contacted. The station manager also states that the station’s EAS logs were located next to the EAS unit. The station manager states that he has no idea why the logs weren’t provided to the agents during the inspection or why the sign was removed. Jackson also asserts that, following the inspection, the EAS unit was replaced. After receipt of Jackson’s response to the *NAL*, agents from the New Orleans Office requested that Jackson send in copies of a portion of its EAS logs. Despite being provided additional time to do so, Jackson stated it was unable to locate its logs. It surmised employees from an entity with which the station had a local marketing agreement may have taken the logs. Accordingly, because Jackson was unable to provide corroborating documents, we do not rely on its statement that it had noted the malfunction prior to the inspection and properly notated that malfunction in its logs. Moreover, Jackson’s corrective action taken to come into compliance with the Rules after the inspection is expected, and does not nullify or mitigate any prior forfeitures or violations.⁸ Thus, based on the evidence before us, we find that Jackson willfully⁹ violated Section 11.35 of the Rules by failing to have an operational EAS installed while the station was in operation on March 12, 2009.

7. Section 73.49 of the Rules¹⁰ requires that antenna structures having radio frequency (RF)

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C. § 503(b)(2)(E).

⁷ 47 C.F.R. § 11.35.

⁸ See e.g., *Syntax-Brilliant Corporation*, Forfeiture Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6323 (2008); *AT&T Wireless Services, Inc.*, Forfeiture Order, 17 FCC Rcd 21866 (2002); *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

⁹ 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 or any rule or regulation of the Commission authorized by this Act....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹⁰ 47 C.F.R. § 73.49.

potential at the base (series fed, folded unipole, and insulated base antennas) must be enclosed within effective locked fences or other enclosures. On March 10, March 11, and March 12, 2009, agents from the New Orleans Office observed the gate on the fence surrounding WJFN-AM's antenna structure unlocked. The antenna had RF potential at the base.

8. In response to the *NAL*, Jackson submits a statement from its station manager that he checks the fence surrounding the antenna structure several times per week to ensure that it is locked. The station manager states that between March 10 and 12, 2009, the station's contract engineer was repairing the transmitter due to a lightning strike. The station manager states that he checked the fence early on March 11 and states that it was locked prior to the inspection. The station manager asserts the fence lock is tricky and needs to be pushed twice to engage. Jackson states that it has since reminded its employees and contractors of the need to ensure that the fence remains locked at all times. Jackson's statements are consistent with the video and notes taken during the agents' inspections on March 10, 11, and 12. When the agents inspected the fence surrounding the antenna structure, the lock was not locked, thus rendering the fence ineffective. The fact that the fence may have been locked at some point or points prior to the agents' inspections does not negate the safety hazard that existed at the time of the inspections. Moreover, the "Commission has long held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors,"¹¹ and when the actions of independent contractors or employees have resulted in violations, the Commission has "consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations."¹² It is also well established that a mistake resulting in a rule violation is considered a willful violation.¹³ Jackson has not presented any evidence that these precedents should not apply here. Thus, based on the evidence before us, we find that Jackson repeatedly¹⁴ violated Section 73.49 of the Rules by failing to have an effective locked fence or other enclosures around the antenna structure, and we decline to cancel or reduce the forfeiture.

9. Finally, Jackson states that the county maintains an outer perimeter fence around the property. If there had been a protective property fence surrounding the perimeter of Jackson's property, there would have been no violation of the rules.¹⁵ However, on March 10, 11, and 12, 2009, the agents did not observe any perimeter property fence around the property. Accordingly, we find no grounds to reduce or cancel the forfeiture on the basis of the alleged perimeter property fence.

¹¹ *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863,-64, para. 7 (2002); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34 (1991)(holding that a company's reliance on an independent contractor to construct a tower in compliance of FCC rules does not excuse that company from a forfeiture); *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972) (holding a licensee responsible for violations of FCC rules despite its reliance on a consulting engineer); *Petracom of Joplin, L.L.C.*, 19 FCC Rcd 6248 (Enf. Bur. 2004) (holding a licensee liable for its employee's failure to conduct weekly EAS tests and to maintain the "issues/programs" list).

¹² *American Paging, Inc. of Virginia*, Notice of Apparent Liability for Forfeiture, 12 FCC Rcd 10417, 10420, para. 11 (Enf. & Cons. Inf. Div., Wireless Tel. Bur. 1997) (quoting *Triad Broadcasting Company*, 96 FCC 2d 1235, 1244 (1984)).

¹³ A violation resulting from an inadvertent mistake or a failure to become familiar with the Commission's requirements is considered a willful violation. See *North Country Repeaters*, 19 FCC Rcd 22139 (Enf. Bur. 2004); *PBJ Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992); *Standard Communications Corp.*, 1 FCC Rcd 358 (1986); *Triad Broadcasting Co., Inc.*, 96 FCC 2d 1235 (1984).

¹⁴ 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 Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

¹⁵ See 47 C.F.R. § 73.49 ("individual tower fences need not be installed if the towers are contained within a protective property fence").

10. Jackson also requests a reduction of the forfeiture, based on its inability to pay and its history of compliance with the rules. We have reviewed our records and Jackson's documentation and conclude that the forfeiture should be reduced to \$1,200, based on Jackson's history of compliance with the rules and its documented inability to pay the forfeiture.

11. We have examined Jackson's 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 reduce the proposed forfeiture to \$1,200, based on Jackson's history of compliance with the rules and inability to pay.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Jackson Radio, LLC **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one thousand two hundred dollars (\$1,200) for violations of Sections 11.35 and 73.49 of the Rules.¹⁶

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.¹⁷ 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 with any questions regarding payment procedures. Jackson will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

¹⁶ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 11.35, 73.49.

¹⁷ 47 U.S.C. § 504(a).

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Jackson Radio, LLC at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau