

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

In the Matter of
JMK Communications Inc.
Licensee of Station WPWC(AM)
Dumfries, Virginia
File No.: EB-11-CF-0110
NAL/Acct. No.: 201232340001
FRN No: 0007309503
Facility ID: 25995

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: July 17, 2012

Released: July 18, 2012

By the District Director, Columbia Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that JMK Communications Inc. (JMK), licensee of AM Station WPWC, in Dumfries, Virginia (Station), apparently willfully and repeatedly violated Section 73.49 of the Commission's rules (Rules)1 by failing to enclose the Station's antenna structures within effective locked fences or other enclosures. We conclude that JMK is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000). We further direct JMK to submit, no later than thirty (30) calendar days from the release date of this NAL, a written statement signed under penalty of perjury stating that the Station is now in compliance with Section 73.49 of the Rules.

II. BACKGROUND

2. On September 2, 2011, in response to a complaint, an agent from the Enforcement Bureau's Columbia Office inspected the Station's four-tower array in Dumfries, Virginia.2 All four antenna structures have radio frequency potential at their base. The agent observed that one of the antenna structures had no fencing at all around the base of the structure, while the other three antenna structures had only partial fencing around their bases, thereby allowing unrestricted access to all the structures. The level of deterioration observed by the agent indicated that the fences had been in that condition for a significant period of time. The agent also observed that there was no perimeter fence around the property where the antenna structures were located.

III. DISCUSSION

3. Section 503(b) of the Communications Act of 1934, as amended (Act), provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or

1 47 C.F.R. § 73.49.

2 At the time of the inspection, the antenna structure registration numbers were not posted at the base of the structures. The agent later determined that the following registration numbers are associated with the Station's antenna structures: 1022267, 1022268, 1022269, and 1022270.

order issued by the Commission thereunder, shall be liable for a forfeiture penalty.<sup>3</sup> Section 312(f)(1) of the Act defines “willful” as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.<sup>4</sup> The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,<sup>5</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>6</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>7</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>8</sup>

#### A. Failure to Enclose the Antenna Structure Within an Effective Locked Fence

4. The evidence in this case is sufficient to establish that JMK violated Section 73.49 of the Rules. Section 73.49 of the Rules requires that antenna structures having radio frequency potential at the base must be enclosed within effective locked fences or other enclosures.<sup>9</sup> On September 2, 2011, agents from the Columbia Office observed that one of the Station’s antenna structures had no fencing and the other three antenna structures had only partial fencing. Based on the degree of deterioration, agents concluded that the fences had been in disrepair for an extended period of time. Agents also did not observe a perimeter fence. Accordingly, based on the evidence before us, we find that JMK apparently willfully and repeatedly violated Section 73.49 of the Rules by failing to enclose the Station’s antenna structures within effective locked fences or other enclosures.

#### B. Proposed Forfeiture and Reporting Requirement

5. Pursuant to the Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for failure to maintain an effective AM tower fence is \$7,000.<sup>10</sup> In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and

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<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> 47 U.S.C. § 312(f)(1).

<sup>5</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982) (“This provision [inserted in Section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) . . . . As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission’s application of those terms . . . .”).

<sup>6</sup> See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

<sup>7</sup> See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

<sup>8</sup> Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

<sup>9</sup> 47 C.F.R. § 73.49.

<sup>10</sup> *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

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>11</sup> Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that JMK is apparently liable for a forfeiture in the amount of \$7,000.<sup>12</sup>

6. We direct JMK to submit a statement, pursuant to Section 1.16 of the Rules<sup>13</sup> signed under penalty of perjury by an officer or director of JMK stating that it is now in compliance with Section 73.49 of the Rules.

#### IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204(b), 0.311, 0.314 and 1.80 of the Commission's rules, JMK Communications Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seven thousand dollars (\$7,000) for violations of Section 73.49 of the Rules.<sup>14</sup>

8. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture and Order, JMK Communications Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. **IT IS FURTHER ORDERED** that JMK Communications Inc. **SHALL SUBMIT** a written statement as described in paragraph 6 within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order. The statement must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, Columbia Office, 9200 Farm House Lane, Columbia, Maryland 21046 and include the NAL/Acct. No. referenced in the caption. JMK Communications, Inc. shall also e-mail the written statement to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov).

10. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. JMK shall also send electronic notification on the date said payment is made to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov). Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>15</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-

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<sup>11</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>12</sup> See, e.g., *Patrick H. Sickafus*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 6818 (Enf. Bur. 2011) (proposing \$7,000 base forfeiture for failure to maintain effective locked fences surrounding two antenna structures in a three-tower array) (forfeiture paid).

<sup>13</sup> 47 C.F.R. § 1.16.

<sup>14</sup> 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.204(b), 0.311, 0.314, 1.80, 73.49.

<sup>15</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

GL, 1005 Convention Plaza, St. Louis, MO 63101.

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

11. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>16</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

12. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80(f)(3) and 1.16 of the Rules.<sup>17</sup> Mail the written statement to Federal Communications Commission, Enforcement Bureau, Northeast Region, Columbia Office, 9200 Farm House Lane, Columbia, Maryland 21046 and include the NAL/Acct. No. referenced in the caption. JMK Communications Inc. also shall e-mail the written response to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov).

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and first class mail, to JMK Communications Inc., 4525 Wilshire Boulevard, Los Angeles, California 90010.

FEDERAL COMMUNICATIONS COMMISSION

Salomon Satche  
District Director  
Columbia Office  
Northeast Region  
Enforcement Bureau

<sup>16</sup> See 47 C.F.R. § 1.1914.

<sup>17</sup> 47 C.F.R. §§ 1.16, 1.80(f)(3).