

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

In the Matter of)	
)	File No.: EB-FIELDSCR-17-00025789
Jupiter Community Radio, Inc.)	NAL/Acct. No.: 202032020007
)	FRN: 0009817149
Licensee of Station WJUP-LP)	
Jupiter, Florida)	Facility ID: 133909

FORFEITURE ORDER

Adopted: August 11, 2022

Released: August 11, 2022

By the Regional Director, Region Two, Enforcement Bureau:

I. INTRODUCTION

1. We impose a penalty of \$25,000 against Jupiter Community Radio, Inc. (Jupiter), licensee of Low Power FM (LPFM) station WJUP-LP, Jupiter, Florida (Station), for failing to operate the Station in accordance with the terms of its Federal Communications Commission (FCC or Commission) authorization and the applicable LPFM technical rules, for failing to make the Station available for inspection, and for failing to maintain Emergency Alert System (EAS) equipment, each a violation of the Communications Act of 1934, as amended (Act),¹ and the Commission's rules.² This action is taken as part of the Commission's duty to manage the radio spectrum, to ensure the accuracy and reliability of the technical data in its licensing databases, to fully investigate violations, and to ensure the Station conveys critical emergency information to the Station's audience. The Enforcement Bureau (Bureau) previously proposed a \$25,000 penalty for these statutory and regulatory violations. Jupiter does not deny the violations occurred, but disputes how the proposed forfeiture was calculated and requests a cancellation or reduction of the proposed forfeiture amount. After considering the entire record, we find no reason to cancel, withdraw, or reduce the proposed penalty, and we therefore assess Jupiter the full \$25,000 forfeiture.

II. BACKGROUND

2. *Legal Framework.* Section 301 of the Act states that “[n]o person shall use or operate any apparatus for the transmission of energy or communications or signals by radio” within the United States except under and in accordance with the Act and with a license granted by the Commission.³ Section 73.840 of the Commission's rules requires each LPFM station to maintain its transmitter power output as near as practicable to, but not more than 105% of, its authorized transmitter power output.⁴ Section 73.845 requires each LPFM licensee to maintain and operate its broadcast station in accordance with the terms of its station authorization, including the transmitter power output, the effective radiated power, the antenna type, and the antenna coordinates specified therein.⁵ Section 73.878(a) requires each LPFM licensee to make its station available for inspection by representatives of the Commission during

¹ 47 U.S.C. § 151 *et seq.*

² 47 U.S.C. § 301, 47 CFR §§ 11.11, 73.840, 73.845, 73.878.

³ 47 U.S.C. § 301. Section 301 of the Act specifies that grant of a license shall not “be construed to create any right, beyond the terms, conditions, and periods of the license.”

⁴ 47 CFR § 73.840.

⁵ 47 CFR § 73.845; *see also* 47 CFR § 73.1745(a), which prohibits the operation of a broadcast station at variance from the terms of its authorization.

the station's business hours, and at any time the station is in operation.⁶ Finally, section 11.11(a) of the Commission's rules specifies the minimum EAS equipment that must be installed at each LPFM station.⁷

3. *Factual Background.* On October 26, 2020, the Bureau issued a Notice of Apparent Liability for Forfeiture (*NAL*) against Jupiter, proposing a \$25,000 penalty for apparent willful violation of section 301 of the Act, and sections 73.840, 73.845, 73.878(a), and 11.11(a) of the Commission's rules.⁸ On February 19, 2020, agents from the Bureau's Miami Field Office monitored the technical parameters of the Station's transmissions, using direction-finding techniques, to determine whether WJUP-LP was operating in an unauthorized manner.⁹ On March 6, 2020, the agents conducted an inspection of the Station's facilities and observed that Jupiter was operating the Station with both a transmitter power output and an effective radiated power that exceeded the parameters set forth in the Station's license¹⁰ and in the Commission's LPFM rules, and confirmed that Jupiter was operating the Station with an unauthorized antenna from an unauthorized location. The Bureau found Jupiter in apparent violation of section 301 of the Act and sections 73.840 and 73.845 of the Commission's rules.¹¹ The Bureau also found that Jupiter failed to make the Station available to the Bureau's agents for inspection in apparent violation of section 73.878(a) of the Commission's rules.¹² During the March 6, 2020 inspection, the agents observed that the Station did not appear to have EAS equipment installed at the Transmitter Site. Jupiter explained that the Station's EAS equipment was located at the studio on the premises of the Omega Church.¹³ During the inspection, an agent requested EAS logs for the six months prior to the inspection to demonstrate that the Station's EAS equipment was installed and functioning correctly. Instead of providing the agent with the information requested, Jupiter provided EAS logs

⁶ 47 CFR § 73.878(a); *see also* 47 U.S.C. § 303(n) (the Commission has "authority to inspect all radio installations associated with stations required to be licensed by any Act . . .").

⁷ 47 CFR § 11.11(a).

⁸ *See Jupiter Community Radio, Inc.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 11831 (EB 2020). The *NAL* includes a more complete discussion of the facts and history of this case and is incorporated herein by this reference.

⁹ *NAL*, 35 FCC Rcd at 11832.

¹⁰ Jupiter held a license to operate the Station at a transmitter site located at 26° 56' 33" North latitude and 80° 04' 18" West longitude (Authorized Site), with a transmitter power output of 45 Watts, an effective radiated power of 20 Watts, and a one-bay Nicom BKG88 antenna. *See Jupiter Community Radio, Inc.*, Application for a Low Power FM Broadcast Station License, File No. BLL-20150722ACD (filed July 22, 2015, granted July 27, 2015).

¹¹ *NAL*, 35 FCC Rcd at 11834-35. *First*, based on agents' observations that the Station was operating with a transmitter power output that was 222% of the authorized level, the Bureau found that Jupiter apparently violated section 73.840 of the Commission's rules. 47 CFR § 73.840. *Second*, based on agents' observations that the Station was operating at an effective radiated power of 177 Watts (instead of the authorized 20 Watts) and with a two-bay antenna (instead of the single-bay antenna specified in its license), the Bureau found that Jupiter apparently violated section 301 of the Act and section 73.845 of the rules by exceeding the technical parameters in its license and LPFM technical rules. 47 U.S.C. § 301, 47 CFR § 73.845. The Station's calculated effective radiated power of 177 Watts far exceeds the 100-Watt maximum facilities permitted for LPFM stations set forth in 47 CFR § 73.811(a). *Third*, based on agents' observations that Jupiter was operating the Station not at the Authorized Site, but was transmitting from the roof of a multi-unit residential building at 26° 56' 16.06" North latitude and 80° 04' 16.35" West longitude (Transmitter Site), a location that is 0.33 miles distant from the Authorized Site, the Bureau found that Jupiter apparently violated section 301 of the Act and section 73.845 of the rules. 47 U.S.C. § 301, 47 CFR § 73.845.

¹² *NAL*, 35 FCC Rcd at 11835. On February 26, 2020, the Bureau's agents attempted to gain access to the Station during normal business hours but did not receive access to the Station until March 6, 2020. *See* 47 CFR § 73.878(a).

¹³ According to the Commission's Licensing and Management System (LMS), The Omega Church International Ministry is the licensee of station WOIB-LP, Oakland Park, FL (Fac. ID No. 195212), and has a pending assignment of authorization application indicating that the assignor is The Omega Church International Ministries, Inc. ("Omega Church") and the proposed assignee is WOIB 101.9 FM Ministry, Inc., File No. 0000143087 (filed Apr. 6, 2021, most recently amended Aug. 19, 2021).

associated with WOIB-LP, which is licensed to Omega Church. In the *NAL*, the Bureau found that Jupiter failed to demonstrate that it had installed EAS equipment for the Station in apparent violation of section 11.11(a) of the rules.¹⁴

4. On November 25, 2020, Jupiter filed a response to the *NAL*.¹⁵ Jupiter does not deny that the Bureau's agents observed the violations described in the *NAL*. Instead, Jupiter seeks reduction or cancellation of the proposed forfeiture amount, arguing (a) that the Bureau assessed the wrong base forfeiture for its unauthorized operation; (b) that Jupiter will make operational changes to better permit station inspection; (c) that providing EAS logs post-*NAL* warrants cancellation of the proposed forfeiture for the EAS violation; and (d) that the proposed forfeiture should be reduced based on Jupiter's record of prior compliance.¹⁶ Specifically, Jupiter argues, with regard to the apparent violation of section 301 of the Act and sections 73.840 and 73.845 of the Commission's rules, that rather than the base forfeiture amount of \$10,000 for operating without an instrument of authorization, the total base amount for this cluster of violations should be \$8,000 (\$4,000 for exceeding power limits and \$4,000 for operating from an unauthorized location).¹⁷ Jupiter further argues that the proposed forfeiture for operating from an unauthorized location should be cancelled entirely because the violation was not deliberate, but the result of a technical error by a consulting engineer, and Jupiter will file a modification application to correct the situation.¹⁸ Jupiter asserts that the unauthorized antenna was used as a substitute temporarily because the original was damaged by lightning, and that Jupiter installed a new antenna which is the model authorized in its Station's license.¹⁹ Jupiter concedes that the Bureau's agents were not given access to the Station for several days, in violation of section 73.878(a) of the rules, but asserts that it is taking steps to arrange for additional personnel to be available to allow the Commission to access the Station in the future.²⁰

¹⁴ *NAL*, 35 FCC Rcd at 11835. Despite three requests from the agent that Jupiter provide EAS information pertaining to the Station, as of the date of the *NAL*, Jupiter had only provided EAS logs for a different LPFM station, WOIB-LP, and provided no evidence that Jupiter installed EAS equipment for the Station.

¹⁵ See *Jupiter Community Radio, Inc.*, Response to Notice of Apparent Liability for Forfeiture (Nov. 25, 2020) (on file in EB-FIELDSCR-17-00025789) (Response). The Response was supported by the written declaration of Wayne Manning, "the president of Jupiter . . . since 2016," made under penalty of perjury as true. Response at Exhibit 2 (Declaration of Wayne Manning). The Bureau released the *NAL* on October 26, 2020, and mailed it to Jupiter via first class mail and certified mail, return receipt requested, on October 27, 2020, to the addresses of record for Jupiter and Omega Church. See 47 CFR § 1.5 ("Each licensee shall furnish the Commission with an address to be used by the Commission in serving documents or directing correspondence to that licensee.") Although the unclaimed envelopes with copies of the *NAL* sent via certified mail were returned to the Bureau (on file in EB-FIELDSCR-17-00025789), the copies sent via regular first class mail were not returned and Jupiter filed its Response on the date ordered in the *NAL*. Thus, we conclude that the *NAL* was received by Jupiter. See, e.g., *Television Station W14CK, Newport, Vermont*, Order, 27 FCC Rcd 13395, 13396, n.5 (MB 2012) (mailing sent via regular mail that was not returned, was presumed delivered). While we recently received information in another proceeding appearing to indicate that Jupiter may have identified other individuals as officers to the state of Florida, Jupiter did not file a transfer of control application or contact update with the Commission until recently and well after the issuance of the *NAL*. See *Jupiter Community Radio, Inc.*, Transfer of Control Application, File No. 0000185397 (filed Feb. 25, 2022, amended Mar. 18, 2022, pending); *Jupiter Community Radio, Inc.*, Administrative Update, File No. 0000186838 (filed Mar. 18, 2022). We find that the *NAL* was properly served on Jupiter. We continue to rely on the contacts in our LMS database and will serve the Forfeiture Order on Jupiter at its address of record with a copy to Jupiter's contact representative.

¹⁶ Response at 1-4.

¹⁷ Response at 1-2.

¹⁸ Response at 2-3, Exhibit 1 (map depicting Authorized Site and Transmitter Site). See *Jupiter Community Radio, Inc.*, Minor Modification of License Facility of a Low Power FM Station License Application, File No. 0000129391 (filed Dec. 3, 2020, granted Sept. 8, 2021); *Jupiter Community Radio, Inc.*, License to Cover for Low Power FM Station Construction Permit Application, File No. 0000185562 (filed Mar. 1, 2022, pending).

¹⁹ Response at 3.

²⁰ Response at 3-4.

Regarding the apparent violation of section 11.11(a) of the Commission's rules, which specifies the minimum EAS equipment that must be installed at each LPFM station, Jupiter attaches to its Response a copy of the EAS logs purported to be for WJUP-LP for a period of several months prior to the date of inspection. Jupiter argues that, "[i]n view of this evidence, the proposed forfeiture for an EAS violation should be cancelled."²¹

III. DISCUSSION

5. The Bureau proposed a forfeiture in this case in accordance with section 503(b) of the Act,²² section 1.80 of the Commission's rules,²³ and the Commission's *Forfeiture Policy Statement*.²⁴ When we assess forfeitures, section 503(b)(2)(E) requires that we 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."²⁵ Based on Jupiter's apparent violations of (a) section 301 of the Act and sections 73.840 and 73.845 of the Commission's rules (unauthorized operation), (b) section 73.878(a) of the Commission's rules (failure to permit inspection), and (c) section 11.11(a) of the Commission's rules (failure to install required EAS equipment), the Bureau proposed an aggregate forfeiture of \$25,000. This total results from the base forfeiture of \$10,000 for operating without an instrument of authorization, \$7,000 for failing to permit an inspection, and \$8,000 for failing to install required EAS equipment.²⁶ We have fully considered Jupiter's Response to the *NAL*, which includes a variety of legal and factual arguments, but we find none of them persuasive. We therefore affirm the \$25,000 forfeiture proposed in the *NAL*.

A. Jupiter Has Provided No Basis to Cancel or Reduce the Forfeiture Amount for its Unauthorized Operation

6. The Bureau's findings in the *NAL* are undisputed. *First*, the Bureau found that Jupiter apparently willfully violated section 73.840 of the Commission's rules by operating the Station with a transmitter power output that was 222% of the authorized level.²⁷ *Second*, the Bureau found that Jupiter apparently willfully violated section 301 of the Act and section 73.845 of the rules by operating the Station at an effective radiated power of 177 Watts with a two-bay antenna, resulting in an effective radiated power that was 8.88 times the authorized 20 Watts and that far exceeded the 100-Watt maximum effective radiated power permitted for LPFM stations.²⁸ *Third*, the Bureau found that Jupiter apparently willfully violated section 301 of the Act, section 73.845 of the rules, and the terms of its license, by operating the Station not at the Authorized Site, but rather from the Transmitter Site, a location that is

²¹ Response at 3, Exhibit 2 ("WJUP Alert Log from 07/01/2019 to 3/7/2020").

²² 47 U.S.C. § 503(b).

²³ 47 CFR § 1.80.

²⁴ *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*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

²⁵ 47 U.S.C. § 503(b)(2)(E).

²⁶ *NAL*, 35 FCC Rcd at 11836.

²⁷ *NAL*, 35 FCC Rcd at 11834. *See* 47 CFR § 73.840.

²⁸ *NAL*, 35 FCC Rcd at 11834. *See* 47 U.S.C. § 301, 47 CFR § 73.845; *see also* 47 CFR § 73.811(a). When the LPFM service was established in 2000 as a secondary, noncommercial radio service with a community focus, the Commission authorized this class of service as LP100. *Creation of Low Power Radio Service*, MM Docket No. 99-25, Report and Order, 15 FCC Rcd 2205 (2000). Since 2000, the Commission has not authorized LPFM stations with powers exceeding 100 Watts effective radiated power. *See Amendments of Parts 73 and 74 to Improve the Low Power FM Radio Service Technical Rules; Modernization of Media Regulation Initiative*, MB Docket Nos. 19-193 and 17-105, Report and Order, 35 FCC Rcd 4115, 4129, para. 36 (2020) (*LPFM Technical Order*), *recons. denied*, Order on Reconsideration, 36 FCC Rcd 10520 (2021).

0.33 miles distant from the Authorized Site.²⁹ Jupiter does not challenge these findings, but rather argues that the Bureau should change how the forfeiture is calculated for these violations or should cancel the proposed forfeiture allocated to operating from an unauthorized location. Specifically, instead of applying a \$10,000 base forfeiture for the unauthorized operation, Jupiter argues that the base forfeiture amount for these violations should be \$8,000 (\$4,000 for exceeding power limits and \$4,000 for operating from an unauthorized location).³⁰

7. We disagree. Because Jupiter operated the Station outside the parameters of its license and outside the parameters permitted in the LPFM radio service, this violation is accurately characterized as “operation without an instrument of authorization for the service,” which has a \$10,000 base forfeiture.³¹ The Station’s license specifies that Jupiter was authorized to operate with a transmitter power output of 45 Watts, an effective radiated power of 20 Watts, and a one-bay Nicom BKG88 antenna at the Authorized Site.³² The Commission’s LPFM rules state that LPFM stations may not exceed the 100-Watt maximum effective radiated power, that each LPFM station must operate with its transmitter power output not more than 105% of its authorized transmitter power output, and that each LPFM licensee must maintain and operate its broadcast station in accordance with the terms of its station license.³³ Jupiter does not deny that its transmitter was located 0.33 miles away from its Authorized Site but argues that the base amount for this violation should be \$4,000 for operating from an unauthorized location. Jupiter asserts that the Bureau should add \$4,000 for exceeding power limits for a total amount of \$8,000 for this cluster of violations. In addition to operating the Station with an unauthorized antenna from an unauthorized location, and operating with both a transmitter power output and an effective radiated power that exceeded the parameters set forth in the Station’s license and in the Commission’s rules, Jupiter was operating the Station with an effective radiated power that could not have been licensed under the LPFM radio service.³⁴ Based upon the evidence before us, we conclude that \$10,000 is the correct base forfeiture amount for Jupiter’s violation of section 301 of the Act and sections 73.840 and 73.845 of the Commission’s rules, and we find no basis to cancel or reduce that forfeiture amount.

8. We also reject Jupiter’s argument that the Bureau should cancel the proposed forfeiture allocated to operating from an unauthorized location because the violation was not deliberate, but the result of a technical error by a consulting engineer. 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

²⁹ *NAL*, 35 FCC Rcd at 11834-35. The Commission has held, and the D.C. Circuit has affirmed, that operating a licensed broadcast station at a location other than the location specified on a station’s license constitutes a violation of section 301 of the Act. *See, e.g., Eagle Broadcasting Group, Ltd.*, Memorandum Opinion and Order, 23 FCC Rcd 588, 592, para. 9 (2008), *aff’d sub nom. Eagle Broadcasting Group, Ltd. v. FCC*, 563 F.3d 543 (D.C. Cir. 2009); *Kingdom of God, Inc.*, Memorandum Opinion and Order, 31 FCC Rcd 7522, 7526, para. 8 (2016), *recon. denied*, 32 FCC Rcd 1599 (2017), *recon. dismissed*, 32 FCC Rcd 3654 (2017), *aff’d sub nom. Kingdom of God, Inc. v. FCC*, 719 Fed. Appx. 19 (D.C. Cir. 2018) (per curiam).

³⁰ Response at 1-2.

³¹ *See* 47 CFR § 1.80.

³² *See* Jupiter Community Radio, Inc., Application for a Low Power FM Broadcast Station License, File No. BLL-20150722ACD (filed July 22, 2015, granted July 27, 2015). The Station’s license also expressly reflects section 301 of the Act in the following language contained in the license: “This license shall not vest in the licensee any right to operate the station nor any right in the use of the frequency designated in the license beyond the term hereof, nor in any other manner than authorized herein.” (Authorization on file in EB-FIELDSCR-17-00025789 and available at fcc.gov/media/filing-systems-and-databases.) *See* 47 U.S.C. § 301.

³³ *See* 47 CFR §§ 73.811(a), 73.840, 73.845.

³⁴ *See* 47 CFR § 73.811(a).

law.³⁵ Here, Jupiter willfully located the transmitter for its Station at the Transmitter Site, instead of the Authorized Site, even if doing so was a mistake on its part. Holding Jupiter liable for its willful violation is consistent with long-standing Commission precedent in which the Commission has held licensees responsible for violations of the Commission's rules where the licensees did not intend to violate the rules but relied on the erroneous advice of an engineer.³⁶ Finally, it is a bedrock Commission licensing policy that Jupiter, as a Commission licensee, is responsible for having knowledge of, and complying with, the Act and the Commission's rules.³⁷

B. Remedial Steps Taken by Jupiter in Response to the Enforcement Action Do Not Support a Reduced Forfeiture for its Failure to Permit Inspection

9. In the course of the Bureau's investigation, Jupiter failed to make the Station available for inspection by the Bureau's agents in violation of section 73.878(a) of the Commission's rules.³⁸ Jupiter, in its Response, concedes that the Bureau's agents were not given access to the Station for several days after their initial request and asserts that it is taking steps to arrange for additional personnel to be available for accessing the Station in the future.³⁹ A fundamental element of the Commission's regulatory scheme is the ability to conduct unannounced inspections at which licensees must provide agents timely access to facilities.⁴⁰ Moreover, the Commission has long held that a licensee's remedial steps taken in response to an enforcement action are not a reason to reduce a forfeiture.⁴¹ And here, Jupiter has yet to remedy the problem, but rather has only stated that it "is taking steps" to be "more readily available to permit access to the station."⁴² Accordingly, we decline to cancel or reduce the forfeiture for Jupiter's willful violation of section 73.878(a) of the Commission's rules for failing to allow inspection of its facilities.

³⁵ 47 U.S.C. § 312(f)(1). 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, and the Commission has so interpreted the term in the section 503(b) context. H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 50-51 (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. . . ."); see, e.g., *S. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88, para. 5 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

³⁶ See, e.g., *Air-Tel, LLC*, Forfeiture Order, 36 FCC Rcd 8867, 8874, para. 17 (2021) (holding a licensee responsible for violations of the Act and the Commission's rules when its engineer mistakenly but unlawfully programmed equipment to operate outside the scope of the licensee's authorization); see also *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64, para. 7 (2002) (stating that the Commission has "consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations") (citing *American Paging, Inc. of Virginia*, Memorandum Opinion and Order, 12 FCC Rcd 10417, 10420, para. 11 (WTB 1997), quoting *Triad Broadcasting Company, Inc.*, Memorandum Opinion and Order, 96 FCC 2d 1235, 1244, para. 21 (1984)).

³⁷ *Forfeiture Policy Statement*, 12 FCC Rcd 17099, para. 22 ("The Commission expects, and it is each licensee's obligation, to know and comply with all of the Commission's rules.").

³⁸ *NAL*, 35 FCC Rcd at 11835; 47 CFR § 73.878(a); see also 47 U.S.C. § 303(n) (the Commission has "authority to inspect all radio installations associated with stations required to be licensed by the Act . . .").

³⁹ Response at 3-4, Declaration of Wayne Manning.

⁴⁰ See *D.T.V., LLC*, Forfeiture Order, 31 FCC Rcd 2650, 2654, para. 12 (2016), *recon. dismissed*, Memorandum Opinion and Order, 31 FCC Rcd 8927 (EB 2016) ("[E]ffective enforcement of the rules 'requires licensees to provide FCC agents with *timely* access to their facilities'").

⁴¹ See, e.g., *Dialing Services, LLC*, Forfeiture Order, 32 FCC Rcd 6192, 6204, para. 32 (2017). See also *AT&T Wireless Services, Inc.*, Forfeiture Order, 17 FCC Rcd 21866, 21875, para. 26 (2002) ("All licensees and Commission regulatees are expected to promptly take corrective action when violations are brought to their attention").

⁴² Declaration of Wayne Manning.

C. Jupiter has Provided No Basis to Cancel the Forfeiture for its Failure to Install EAS Equipment

10. Every broadcast station is part of the nationwide EAS network, a public warning system through which EAS participants are required to deliver alerts to the public to warn of impending emergencies and dangers to life and property. The installation of minimum EAS equipment in a station is a core component of serving as an EAS participant.⁴³ During an inspection of the Station's facilities on March 6, 2020, the agents observed that the Station did not appear to have any EAS equipment installed at the Transmitter Site. During that inspection, Jupiter explained that the Station's EAS equipment was located at the studio on the premises of Omega Church, the licensee of a different station, WOIB-LP, located in Coral Springs, Florida. One of the Bureau's agents then requested copies of the required EAS logs to demonstrate that the Station's (WJUP-LP) EAS equipment was installed and functioning correctly. As of the date of the *NAL*, Jupiter had only provided EAS logs for the other licensee's station, WOIB-LP, and provided no evidence that Jupiter installed EAS equipment for its Station, WJUP-LP. In the *NAL*, the Bureau found that Jupiter apparently failed to demonstrate that it installed EAS equipment for the Station and therefore apparently willfully violated section 11.11(a) of the Commission's rules.⁴⁴ In response to the *NAL*, Jupiter attached to its Response a document purporting to be the Station's EAS logs covering a period of several months prior to the date of inspection of the Station's facilities at the Transmitter Site. Based on those EAS logs, Jupiter argues that the Bureau should cancel the proposed forfeiture for the violation of the Commission's EAS rules.⁴⁵

11. We disagree. It is undisputed that Jupiter did not have EAS equipment installed at the Transmitter Site during the inspection on March 6, 2020. Jupiter's representation to the Bureau's agents that the Station's EAS equipment was located at the studio on the premises of Omega Church does not demonstrate compliance with the EAS equipment requirements. The Response fails to demonstrate how the Station and WOIB-LP could use a single EAS decoder to satisfy their different monitoring obligations. State and local area EAS plans identify local primary sources responsible for coordinating carriage of emergency messages from the sources, such as the National Weather Service or local emergency management officials.⁴⁶ State EAS plans are organized by operational areas within each state. According to the State of Florida EAS Plan, the state is divided into 12 major EAS Operational Areas. Broadcast stations in Palm Beach County are in Operational Area 10, and stations in Broward County are in Operational Area 11.⁴⁷ Because the Station is licensed to provide service in the City of Jupiter in Palm Beach County, while WOIB-LP is licensed to provide service in Oakland Park in Broward County, the

⁴³ See 47 CFR § 11.11(a). LPFM stations are included in the Commission's definition of EAS participants. At a minimum, each LPFM station must install a properly functioning EAS decoder to receive emergency alerts and provide audio messages to their audience. *Id.*

⁴⁴ *NAL*, 35 FCC Rcd at 11835.

⁴⁵ Response at 3.

⁴⁶ 47 CFR § 11.18(f). "A Local Primary (LP) is an entity that serves as a monitoring assignment for other EAS Participants within the state." *Id.* "State EAS plans contain guidelines that must be followed by EAS Participants' personnel, emergency officials, and National Weather Service (NWS) personnel to activate the EAS." 47 CFR § 11.21(a). State EAS plans must show "monitoring assignments and the specific primary and backup path for emergency action notification (EAN)/Presidential Alert messages from the [Primary Entry Point] to all key EAS sources." 47 CFR § 11.21(a)(4).

⁴⁷ See State of Florida Emergency Alert System Plan (Approved October 2019, Revised November 11, 2019); see also State of Florida Emergency Alert System Plan (Approved June 2020, Revised April 2021), <https://fab.org/eas-plan/>.

two stations are in different Florida EAS Operational Areas. The monitoring assignments for each of the two stations are different and some of the emergency messages are different.⁴⁸

12. Similarly, the EAS logs submitted by Jupiter with its Response are insufficient to demonstrate that the Station's EAS equipment was installed and functioning correctly. Under section 11.52(d)(1) of the Commission's rules, EAS participants must monitor the two EAS sources assigned to the participating station in the state's EAS plan,⁴⁹ yet the EAS logs supplied in the Response do not demonstrate that the Station was monitoring its two assigned EAS sources. Under the State of Florida Emergency Alert System Plan in effect at the time of the inspection, one of the two EAS sources that WJUP-LP was required to monitor was the Local Primary 1 station for Operational Area 10, WQCS(FM), Fort Pierce, Florida. EAS participants are required to use a common EAS protocol, as defined in section 11.31 of the Commission's rules, to send and receive emergency alerts. Under this protocol, an EAS alert includes EAS header codes that must, among other things, identify the EAS Participant transmitting or retransmitting the message.⁵⁰ The EAS logs purported to be for WJUP-LP do not demonstrate that WJUP-LP was monitoring WQCS for EAS messaging, nor any other station in Operational Area 10, because none of the EAS header codes for messages received identify WQCS or another station in Operational Area 10 as the station sending the message to WJUP-LP.⁵¹ Moreover, even had these logs shown proper EAS monitoring (which they do not), the logs were not provided at or close to the time of the inspection. Therefore, based on the record before us, Jupiter has not demonstrated that, at the time of the inspection, the Station had EAS equipment installed and was monitoring its assigned EAS sources designated in the State of Florida EAS Plan. Accordingly, we find no basis to cancel or reduce the forfeiture for Jupiter's violation of section 11.11(a) of the Commission's rules.

D. Jupiter's Record Does Not Warrant Reduction of the Proposed Forfeiture

13. We reject Jupiter's request for reduction of the proposed forfeiture on the basis of its purported record of prior compliance. When considering a licensee's history of compliance, the Commission considers prior monetary and non-monetary sanctions.⁵² On December 20, 2017, the Bureau issued a Notice of Unlicensed Operation to Jupiter's president, Wayne Manning, and to The Omega Church International Ministries, Inc. for operating an unlicensed station on 104.1 MHz in West Palm Beach, Florida, in violation of section 301 of the Act.⁵³ In his written response to the Notice of Unlicensed Operation, Manning admitted that he was operating the station, and stated that operation of the station was a 48-hour weekend test in West Palm Beach using Jupiter's WJUP-LP Station equipment to determine whether WJUP-LP should change from 103.9 MHz (its authorized frequency) to 104.1

⁴⁸ In addition to the two stations in different Florida EAS Operational Areas, there is no record evidence of a written agreement between the two licensees under section 11.52(c) of the Commission's rules, which allows co-located LPFM stations that are not co-owned under the ownership restrictions in 47 CFR § 73.855, to comply with the EAS monitoring requirements using a single EAS decoder pursuant to a written agreement that includes terms listed in the rule. See 47 CFR § 11.52(c). The *LPFM Technical Order* adopted certain changes to the LPFM technical rules, including changes to 47 CFR § 11.52(c). The amended section 11.52(c) became effective July 13, 2020.

⁴⁹ See 47 CFR § 11.52(d)(1).

⁵⁰ See 47 CFR §§ 11.11(a), 11.31.

⁵¹ See Response, Exhibit 2.

⁵² See *Tidewater Communications LLC*, Order on Review, 25 FCC Rcd 1675, 1678-79, para. 11 (2010) (affirming the Bureau's rejection of a request for a reduction based on a history of compliance where a prior monetary forfeiture was cancelled but the underlying notice of violation survived).

⁵³ *The Omega Church International Ministries, Inc., Attn. Wayne J. Manning*, Notice of Unlicensed Operation (EB 2017), <https://docs.fcc.gov/public/attachments/DOC-348455A1.pdf> (on file in EB-FIELDSCR-17-00025680).

MHz.⁵⁴ On the dates of the violation in November 2017, Manning was the president of Jupiter.⁵⁵ The Commission has held licensees responsible and imposed sanctions for transgressions of a principal acting within the scope of his or her position.⁵⁶ Given the unlicensed operation by Manning, a principal of Jupiter, using Jupiter's WJUP-LP Station equipment while testing to determine whether Jupiter would benefit from a change in WJUP-LP's frequency, we find that Manning was acting within the scope of his position as president of Jupiter, and his willful misconduct may be imputed to Jupiter. Accordingly, we do not find that Jupiter has a record of prior compliance that warrants a downward forfeiture adjustment.

14. Moreover, even if Jupiter had a history of compliance, that factor would be outweighed by Jupiter's failure to demonstrate that it has fully corrected all of the violations.⁵⁷ For example, regarding Jupiter's failure to permit inspection in violation of section 73.878(a) of the Commission's rules,⁵⁸ Jupiter has only provided a statement that efforts are underway to arrange for additional personnel to be available to permit future inspections.⁵⁹ For Jupiter's failure to install the required EAS equipment in violation of section 11.11(a) of the Commission's rules,⁶⁰ Jupiter has not provided evidence demonstrating that it has installed EAS equipment and is monitoring its assigned EAS sources designated in the State of Florida EAS Plan.

15. Weighing the relevant statutory factors and our own forfeiture guidelines, we conclude, based upon the evidence before us, that the proposed forfeiture of \$25,000 properly reflects the proper application of the relevant base forfeiture amounts and the seriousness of Jupiter's multiple violations. Accordingly, we find that Jupiter is liable for a total forfeiture of \$25,000.⁶¹

IV. CONCLUSION

16. Based on the record before us and in light of the applicable statutory factors, we conclude that Jupiter willfully violated section 301 of the Act, and sections 73.840, 73.845, 73.878(a), and 11.11(a) of the Commission's rules by failing to operate the Station in accordance with the terms of its FCC

⁵⁴ See *Wayne Manning, The Omega Church International Ministries*, Response to Notice of Unlicensed Operation (Dec. 29, 2017) (on file in EB-FIELDSCR-17-00025680).

⁵⁵ See 2017 Florida Not for Profit Corporation Annual Report (Feb. 21, 2017) (identifying Manning as Jupiter's president and director) (on file in EB-FIELDSCR-17-00025789).

⁵⁶ See, e.g., *Revocation of License of KWK Radio, Inc.*, Decision, 34 FCC 1039 (1963) (revoking broadcast license due to fraud by station manager, a vice president), *recon. denied*, Memorandum Opinion and Order, 35 FCC 561 (1963), *aff'd sub nom. KWK Radio, Inc. v. FCC*, 337 F.2d 540 (D.C. Cir. 1964), *cert. denied*, 380 U.S. 910 (1965). The Commission found that "the station manager was a vice president of KWK with broad authority over day-to-day station operation In this capacity he was himself a principal. In any event, the station manager was not on a lark on his own . . . but was acting within the scope of his position, and his willful misconduct may be properly imputed to KWK." 35 FCC 561, 562, para. 5.

⁵⁷ History of compliance is one of several factors to be considered when determining the appropriate forfeiture and the Commission retains the discretion to decline reducing or canceling a forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result. See, e.g., *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860-62, paras. 21-23 (2018) (declining an inability to pay claim where illegal actions were egregious and could "interfere with licensed communications, including authorized broadcasts and public safety transmissions"); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018) (inability to pay is one of several factors to be considered in determining the appropriate forfeiture and can be outweighed by other factors).

⁵⁸ 47 CFR § 73.878(a).

⁵⁹ Response at 3-4, Declaration of Wayne Manning.

⁶⁰ 47 CFR § 11.11(a).

⁶¹ Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

authorization and the applicable LPFM technical rules, failing to make the Station available for inspection, and failing to maintain EAS equipment. We therefore decline to cancel or reduce the \$25,000 forfeiture proposed in the *NAL*.

V. ORDERING CLAUSES

17. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act,⁶² and section 1.80 of the Commission's rules,⁶³ Jupiter Community Radio, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of Twenty-Five Thousand Dollars (\$25,000) for willfully violating section 301 of the Act⁶⁴ and sections 11.11(a), 73.840, 73.845, and 73.878(a) of the Commission's rules.⁶⁵

18. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules within thirty (30) calendar days after the release of this Forfeiture Order.⁶⁶ Jupiter Community Radio, Inc. shall send electronic notification of payment to the Office of the Field Director, Enforcement Bureau, Federal Communications Commission, at field@fcc.gov on the date said payment is made. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to section 504(a) of the Act.⁶⁷

19. Payment of the forfeiture must be made by credit card using the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:⁶⁸

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159⁶⁹ or printed CORES form⁷⁰ must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).⁷¹ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this

⁶² 47 U.S.C. § 503(b).

⁶³ 47 CFR § 1.80.

⁶⁴ 47 U.S.C. § 301.

⁶⁵ 47 CFR §§ 11.11(a), 73.840, 73.845, 73.878(a).

⁶⁶ 47 CFR § 1.80.

⁶⁷ 47 U.S.C. § 504(a).

⁶⁸ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

⁶⁹ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

⁷⁰ Information completed using the Commission's Registration System (CORES) does not require the submission of an FCC Form 159. CORES is accessible at <https://apps.fcc.gov/cores/userLogin.do>.

⁷¹ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.

- Payment by ACH must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

20. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 45 L Street NE, Washington, DC 20554.⁷² Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, to: ARINQUIRIES@fcc.gov.

21. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to Jupiter Community Radio, Inc. at its address of record, and to Michael W. Richards, Esq., P.O. Box 5842, Takoma Park, Maryland 20913.

FEDERAL COMMUNICATIONS COMMISSION

Dedrick Roybiskie
Regional Director
Region Two
Enforcement Bureau

⁷² See 47 CFR § 1.1914.