

Federal Communications Commission

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

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

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: May 19, 2009

By the District Director, New Orleans Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Jackson Radio, LLC (“Jackson”), licensee of station WJFN-AM, in Brandon, Mississippi, apparently willfully violated Section 11.35 of the Commission's Rules (“Rules”)¹ and willfully and repeatedly violated Section 73.49 of the Rules² by failing to have an operational Emergency Alert System (EAS) and failing to have an effective locked fence or other enclosures around the antenna structure. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),³ that Jackson is apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000).

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.

III. DISCUSSION

3. Section 503(b) of the 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 order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term “willful” as used in Section 503(b) of the Act has been

¹ 47 C.F.R. § 11.35.

² 47 C.F.R. § 73.49.

³ 47 U.S.C. § 503(b).

interpreted to mean simply that the acts or omissions are committed knowingly.⁴ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁵

4. Section 11.35 of the Rules⁶ 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 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.

5. Section 73.49 of the Rules⁷ requires that antenna structures having radio frequency (RF) 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.

6. Based on the evidence before us, we find that Jackson willfully violated Section 11.35 of the Rules and willfully and repeatedly violated Section 73.49 of the Rules by failing to have an operational Emergency Alert System (EAS) and failing to have an effective locked fence or other enclosures around the antenna structure.

7. Pursuant to *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, (“*Forfeiture Policy Statement*”), and Section 1.80 of the Rules, the base forfeiture amounts for EAS equipment not installed or operational and AM tower fencing are \$8,000 and \$7,000, respectively.⁸ 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 with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.⁹ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Jackson is apparently liable for a \$15,000 forfeiture.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Jackson Radio, LLC, is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the

⁴ 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).

⁵ 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.”

⁶ 47 C.F.R. § 11.35.

⁷ 47 C.F.R. § 73.49.

⁸ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

⁹ 47 U.S.C. § 503(b)(2)(E).

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amount of fifteen thousand dollars (\$15,000) for violations of Sections 11.35 and 73.49 of the Rules.¹⁰

9. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Jackson Radio, LLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the 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 Federal Reserve Bank of New York, 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. 20554.⁸ If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. If payment is made, Jackson Radio, LLC, will send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

11. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, New Orleans Office, 2424 Edenborn Ave., Suite 460, Metairie, Louisiana, 70001 and must include the NAL/Acct. No. referenced in the caption.

12. 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.

13. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Jackson Radio, LLC, at the address of record.

FEDERAL COMMUNICATIONS COMMISSION

Walter Gemon
Acting District Director
New Orleans Office
South Central Region
Enforcement Bureau

¹⁰ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.49.

⁸ See 47 C.F.R. § 1.1914.