

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

In the Matter of	)	
	)	
A-O Broadcasting Corporation	)	File No. EB-01-DV-334
	)	
Licensee of Station KTMN(FM)	)	NAL/Acct. No. 200332800001
Cloudcroft, New Mexico	)	FRN # 0005-0204-74
Facility ID #89049	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: November 14, 2002**

**Released: November 18, 2002**

By the Commission:

**I. Introduction**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that A-O Broadcasting Corporation (“A-O”), licensee of FM radio station KTMN, Cloudcroft, New Mexico, apparently willfully and repeatedly violated Sections 1.1310, 11.35, 73.1125, and 73.1400 of the Commission’s Rules (“Rules”)<sup>1</sup> by failing to comply with radio frequency radiation maximum permissible exposure limits applicable to transmitters on towers, failing to have EAS equipment installed and operating, failing to maintain a main studio and failing to have adequate transmission system control. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),<sup>2</sup> that A-O is apparently liable for a forfeiture in the amount of twenty-eight thousand dollars (\$28,000).

**II. Background**

2. In 1996, the Commission amended its rules to adopt new guidelines and procedures for evaluating the environmental effects of radio frequency radiation (“RFR”) from FCC-regulated transmitters.<sup>3</sup> The Commission adopted maximum permissible exposure (“MPE”) limits for electric and magnetic field strength and power density for transmitters operating on towers at frequencies from 300 kHz to 100 GHz.<sup>4</sup> These MPE limits, which are set forth in Section 1.1310 of the Rules, include limits

<sup>1</sup> 47 C.F.R. §§ 1.1310, 11.35, 73.1125, and 73.1400.

<sup>2</sup> 47 U.S.C. § 503(b).

<sup>3</sup> *Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, Report and Order*, ET Docket No. 93-62, 11 FCC Rcd 15123 (1996), *recon. granted in part, First Memorandum Opinion and Order*, 11 FCC Rcd 17512 (1996), *recon. granted in part, Second Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 12 FCC Rcd 13494 (1997).

<sup>4</sup> *See* 47 C.F.R. § 1.1310, Table 1. The MPE limits are generally based on recommended exposure guidelines published by the National Council on Radiation Protection and Measurements (“NCRP”) in “Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields,” NCRP Report No. 86, Sections 17.4.1, 17.4.1.1., 17.4.2, and 17.4.3 (1986). In the frequency range from 100 MHz to 1500 MHz, the MPE limits are also generally based on guidelines contained in the RF safety standard developed by the Institute of Electrical and Electronics Engineers, Inc. (“IEEE”) and adopted by the American National Standards Institute (“ANSI”) in Section 4.1 of

for “occupational/controlled” exposure and limits for “general population/uncontrolled” exposure. The occupational exposure limits apply in situations in which persons are exposed as a consequence of their employment provided those persons are fully aware of the potential for exposure and can exercise control over their exposure.<sup>5</sup> The limits for occupational exposure also apply in situations where an individual is transient through a location where the occupational limits apply, provided that he or she is made aware of the potential for exposure. The more stringent general population or public exposure limits apply in situations in which the general public may be exposed, or in which persons that are exposed as a consequence of their employment may not be fully aware of the potential for exposure or cannot exercise control over their exposure.<sup>6</sup>

3. An applicant for an initial construction permit, license, or renewal or modification of an existing license is generally required to perform the necessary analysis (e.g., calculations and/or measurements) to determine whether a particular transmitting facility on a tower complies with the RFR exposure limits. If, on the basis of its analysis, the applicant determines that the facility complies with the RFR exposure limits, the applicant certifies compliance as part of its application. If, on the other hand, the applicant determines that operation of the facility will not comply with the RFR exposure limits, the applicant is required under Section 1.1307(b) of the Rules either to prepare an Environmental Assessment and undergo environmental review by Commission staff or to amend its application so as to comply with the RFR limits.<sup>7</sup> The Commission’s Office of Engineering and Technology (“OET”) has prepared OET Bulletin 65, “Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields,” to provide assistance to applicants in determining whether proposed or existing transmitting facilities on towers comply with the RFR exposure limits.

4. On October 29, 2001, the FCC’s Denver, Colorado Field Office (“Denver Office”) received a complaint alleging that FM broadcast station KTMN in Cloudcroft, New Mexico, was not operating at the authorized power and was not in compliance with the FCC’s RFR tower guidelines due to the antenna’s low radiation center above ground level (“AGL”). KTMN is authorized to operate on frequency 97.9 MHz with an effective radiated power (“ERP”) of 100 kW using a Superior Broadcast 8-bay antenna model with 0.75 wavelength spacing, operating with a center of radiation equal to 18 meters AGL.<sup>8</sup> The station authorization for KTMN also includes the following special operating conditions: (1) “If the licensee makes any changes in facilities via modifications of license application in accordance with 47 C.F.R. 73.1690(c), the subsequent Form 302-FM, application for license, must include a revised RF field showing to demonstrate continued compliance with the FCC guidelines”; (2) “Warning signs which describe the radiofrequency electromagnetic (RF) field hazard must be posted at appropriate intervals. These signs must be at least 8 meters distant from the base of the tower. Measures must be taken so that persons who are authorized access to the site are not exposed to levels in excess of the FCC guidelines”; and (3) “The permittee/licensee in coordination with other users of the site must reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from radiofrequency electromagnetic fields in excess of FCC guidelines.”

5. The complainant’s information indicated that the antenna was placed significantly lower

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“IEEE Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz,” ANSI/IEEE C95.1-1992 (1992).

<sup>5</sup> 47 C.F.R. § 1.1310, Note 1 to Table 1.

<sup>6</sup> 47 C.F.R. § 1.1310, Note 2 to Table 1.

<sup>7</sup> 47 C.F.R. § 1.1307(b).

<sup>8</sup> The former Mass Media Bureau granted A-O’s application for a license to cover the construction permit for Station KTMN on October 5, 2001 (File No. BLH-20010924AAM).

on the antenna structure than authorized. Based on pictures of the antenna structure provided by the complainant, it appeared that the antenna was mounted only 13 meters AGL, rather than 18 meters AGL as required in the station authorization. Mathematical RFR modeling calculations performed by the Denver Office staff indicated that operation of station KTMN with the transmitting antenna mounted only 13 meters AGL created a significant potential for RFR levels at the base of the tower and beyond in excess of the FCC's exposure limits for the general population set forth in Section 1.1310 of the Rules.

6. On November 14, 2001, FCC agents from the Denver Office conducted an inspection of the KTMN transmitting facility in Cloudcroft, New Mexico. The agents found the KTMN transmitting antenna, a Superior Broadcast 8-bay antenna with 0.75 wavelength spacing, side mounted approximately 13 meters AGL on a United States Forest Service ("USFS") fire lookout tower at the authorized location. The top bay of the antenna was level with the lookout platform. RFR warning signs were placed on a 2.5 meter tall ground fence approximately three meters from the base of the tower. The lookout tower was in a gated and locked area approximately 30 meters from Forest Service Road 175 ("FSR 175"). The agents also noted that numerous vehicles used FSR 175 during the time that the agents were at the KTMN site.

7. When the agents arrived at the transmitter site, the station was not operating. KTMN's owner subsequently advised the agents that the station had been off the air for one week, following a November 7, 2001, electrical surge which affected the programming capabilities of KTMN. Due to the serious public safety nature of the allegations in the complaint, the agents asked KTMN's owner to turn the transmitter on so that they could take RFR measurements. KTMN's owner turned the transmitter on to 40% of the authorized power and transmitted an unmodulated carrier (i.e., a radio signal with no programming material being broadcast). The owner was not able to achieve 100% authorized power and admitted the most the station ever achieved was about 60% of the authorized power. The owner stated that he had no monitoring equipment or remote control for the station, but that he would monitor the station on a consumer-grade portable receiver at his residence in Alamogordo to confirm the station was on the air.

8. At 40% of the authorized power, the agents found publicly accessible areas outside the fence surrounding the lookout tower that significantly exceeded the FCC's RFR MPE limits for the general population. The agents also found numerous areas on the stairway of the lookout tower in excess of both the public and the occupational MPE limits. Inside the lookout platform, RFR fields exceeded the public MPE limits. In particular, using spatially averaged techniques to measure the RFR fields, the agents found the following:

<u>Location</u>	<u>RFR as Measured by Agents (mW/cm<sup>2</sup>)</u>	<u>RFR Public MPE Limit (mW/cm<sup>2</sup>)<sup>9</sup></u>	<u>% Over RFR Public MPE Limit</u>
20 to 60 feet from tower base	0.63	0.2	315
Lookout tower stairway	3.0 <sup>10</sup>	0.2	1500
Lookout platform area	0.7	0.2	350

9. The temporary special use permit issued by the USFS to the owner of A-O expressly provided USFS personnel unrestricted access to the structure and no arrangements existed for USFS personnel to contact the licensee when accessing the tower. In addition, the agents spoke with USFS personnel and determined that USFS rangers with access to the lookout tower stairway and platform had no training with respect to RFR and no knowledge of RFR exposure potential from the radio transmitting antenna mounted just a few feet from their fire lookout.

<sup>9</sup> This is the MPE limit for the general population set forth in Section 1.1310 of the Rules for radio stations operating in the frequency range 30-300 MHz. KTMN is licensed to operate on 97.9 MHz.

<sup>10</sup> This value was the maximum limit of the meter, Narda 8718 and Type 8722 probe combination.

10. The agents also found that KTMN had no main studio and had no EAS equipment installed. Upon arriving in Cloudcroft, the agents first attempted to locate KTMN's main studio by going to the addresses specified in A-O's construction permit and license applications, but they did not find a main studio at these locations.<sup>11</sup> The agents also searched the local telephone directory but found no listing for KTMN or A-O. A-O's owner was not present at the KTMN transmitter site when the agents initially arrived at the site. When A-O's owner subsequently met the agents at the transmitter site, he told the agents that he was temporarily using the transmitter building as a main studio. However, the agents observed that the transmitter building was contained within the locked fence that surrounded the lookout tower and therefore was not accessible to the public. In addition, the agents noted that the transmitter building was filled with equipment and there was little room, if any, for more than one person to move around in the building. Furthermore, the owner stated that he visited the site every day, or every other day, but had no other personnel present at the transmitter site when he was not there. The owner advised the agents that a permanent studio was being constructed in downtown Alamogordo, but the building was undergoing renovation. The agents observed EAS equipment in a box in the transmitter building, but no EAS equipment was installed or operational. The inspection revealed numerous other rule violations, including, among other things: failure to operate at the station at the minimum power of 90% of the authorized power of 100 kW (47 C.F.R. § 73.1560(b)); failure to follow the minimum operating schedule (47 C.F.R. § 73.1740(a)); failure to post the station license (47 C.F.R. § 73.1230); failure to designate a chief operator (47 C.F.R. § 73.1870(a)); and failure to maintain a public inspection file (47 C.F.R. § 73.3526).

11. On November 21, 2001, the Denver Office issued a warning letter to A-O advising A-O that KTMN was not in compliance with RFR exposure limits. The letter requested that prior to KTMN's return to operational status, measurements be made to determine the appropriate levels at which operation would comply with the FCC's RFR limits at: (1) ground level; (2) on the stairway leading to the lookout; and (3) inside the lookout platform area.

12. On December 5, 2001, A-O submitted a reply to the warning letter. A-O stated that KTMN would take all appropriate action to comply with the FCC's RFR limits and that the RFR problem would be best dealt with by relocating the transmitting facilities of KTMN. A-O's reply also stated that both KTMN personnel and USFS rangers had keys to the locked gate and that areas inside the fence would be kept below the public limits when any person accessed the lookout tower. A-O further asserted that because a theoretical RFR analysis as outlined in OET Bulletin 65 had been completed for KTMN and because the Commission granted A-O a construction permit and license for KTMN after reviewing this analysis, the Commission now had no right to penalize A-O for violation of the RFR rules.

13. By letter dated November 20, 2001,<sup>12</sup> A-O notified the Commission that on November 7, 2001, KTMN ceased transmitting as a result of a transient failure of the station's computer. A-O further stated that KTMN would remain silent in order to complete improved studio facilities and to make some adjustments to its transmitting facilities and that if these matters caused KTMN to remain silent for longer than 30 days, A-O would seek special temporary authority ("STA") to remain silent pursuant to Sections 73.1635 and 73.1740 of the Rules.<sup>13</sup> A-O filed a request for STA with the Media Bureau to permit

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<sup>11</sup> One of these locations was a private residence formerly owned by A-O's owner, while the other was a retirement home managed by A-O's owner.

<sup>12</sup> The Commission received this letter on January 9, 2002.

<sup>13</sup> 47 C.F.R. §§ 73.1635 and 73.1740. Section 73.1740(a)(3) of the Rules provides that if causes beyond the licensee's control make it impossible to continue operating, the station may discontinue operation for a period of no more than 30 days without further authorization from the FCC. However, the licensee must notify the FCC no later than the tenth day after it discontinues operation. In addition, if the causes beyond the control of the licensee make it impossible to resume operation within the 30-day period, the licensee must make a written request for such

KTMN to remain silent on March 14, 2002, approximately four months after KTMN suspended operations, and amended its STA request on June 10, 2002, and again on June 21, 2002. In the STA request, A-O stated that in November 2001, the Denver Office determined that KTMN's transmitting antenna on the USFS lookout tower created a risk of excessive RF exposure to nearby persons; that on March 4, 2002, the USFS requested that the transmitter and antenna bays be removed from the authorized site; and that it was negotiating with the USFS to relocate the transmitter to a new site. On June 25, 2002, the Media Bureau granted A-O STA for KTMN to remain silent through November 7, 2002. On August 22, 2002, A-O filed an application seeking authorization to relocate the transmitter for KTMN to a new site.<sup>14</sup>

### III. Discussion

14. 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 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.<sup>15</sup> The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>16</sup> The term "repeated" means that the violation occurred on more than one day.<sup>17</sup>

15. Section 1.1310 of the Rules requires licensees to comply with RFR exposure limits.<sup>18</sup> Table 1 in Section 1.1310 provides that the MPE limit for the general population from a radio station operating in the frequency range 30-300 MHz is 0.200 mW/cm<sup>2</sup> and the MPE limit for occupational or controlled exposure from a station operating in this frequency range is 1 mW/cm<sup>2</sup>.

16. A-O certified in its construction permit and license applications that operation of station KTMN in Cloudcroft, New Mexico would comply with the FCC's RFR exposure limits and would not require the filing of an Environmental Assessment. The construction permit for KTMN authorized A-O to construct the station with the antenna radiation center at 18 meters AGL.<sup>19</sup> A-O certified in its application for a license to cover the construction permit that the station was constructed as authorized in the construction permit. However, A-O did not construct KTMN as authorized.<sup>20</sup> The antenna was

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additional time as may be deemed necessary no later than the 30th day. 47 C.F.R. § 73.1740(a)(3).

<sup>14</sup> File No. BPH-20020822AAC.

<sup>15</sup> 47 U.S.C. § 503(b).

<sup>16</sup> 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).

<sup>17</sup> Section 312(f)(2) 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." 47 U.S.C. § 312(f)(2).

<sup>18</sup> 47 C.F.R. § 1.1310.

<sup>19</sup> The former Mass Media Bureau granted A-O's construction permit application on September 24, 1998 (File No. BPH-19971030MG).

<sup>20</sup> Because A-O did not construct KTMN as authorized in the construction permit, we reject A-O's claim in response to the Denver Office's warning letter that the Commission cannot now penalize it for violation of the RFR rules. The Commission's review of the RFR analysis provided by A-O in its construction permit application was

mounted at 13 meters AGL, rather than the authorized 18 meters AGL. In addition, the license for KTMN contained special RF operating conditions, including a requirement for a revised RF field study in the event of any modification of the authorized facilities. A-O did not submit a revised RF study to demonstrate that an antenna mounted at 13 meters AGL would comply with the RFR limits as required by KTMN's license.

17. The license for KTMN also included special operating conditions requiring A-O to post RF warning signs at least eight meters from the base of the tower and to reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from RFR fields in excess of FCC limits. A-O did not comply with these conditions. Warning signs were only found on a fence three meters from the base of the tower. The USFS rangers that could access the tower and lookout were not informed of the RFR hazard and were never instructed to contact the licensee before accessing the stairway or lookout platform on the tower. Additionally, the KTMN transmitter site was not remote and was easily accessible to the general public.

18. The USFS rangers who had access to the lookout tower on which KTMN's antenna was mounted had no training with respect to RFR and no knowledge of the potential impact of RFR exposure. Absent such training and knowledge, the rangers are considered members of the general population. Furthermore, as noted above, the area surrounding the KTMN transmitter site was readily accessible to the general public. Thus, the RFR exposure limits for the general population set forth in Section 1.1310 apply in this case. Based on RFR modeling of the transmitter at the authorized power and on-site measurements at 40% of the authorized power, FCC agents determined that operation of KTMN as constructed created RFR fields that exceeded the RFR exposure limits for the general population. With the station operating at only 40% of the authorized power,<sup>21</sup> the FCC agents found spatially averaged RFR fields which were more than 300% over the limits for maximum permissible exposure by the public at distances of 20 to 60 feet from the base of the tower, which includes areas outside of the fence surrounding the lookout tower that were accessible to the general public and within the lookout platform. In addition, the agents found spatially averaged RFR fields which were more than 1500% over the limits for maximum permissible exposure by the public on the stairway leading to the lookout tower. Given that the RFR fields exceeded the public MPE limits by more than 300% with the station operating at only 40% of authorized power at the time of the inspection on November 14, 2001, it is clear that KTMN was not in compliance with the MPE limits during its operation at higher power levels between October 5, 2001, when the license for KTMN was granted, and November 7, 2001, when A-O took the station off the air. Accordingly, based on the evidence before us, we find that A-O apparently willfully and repeatedly violated Section 1.1310 of the Rules during the period from October 5, 2001 and November 7, 2001 by exceeding the RFR exposure limits for the general population and failing to take measures to adequately prevent the public from accessing areas that exceeded the RFR exposure limits.

19. Section 11.35(a) of the Rules states in part that all broadcast stations are "responsible for ensuring that EAS Encoders, Decoders, and Attention Signal generating and receiving equipment used as part of the EAS are installed so that monitoring and transmitting functions are available during the times that stations ... are in operation."<sup>22</sup> At the time of inspection, no EAS equipment was installed or operational at station KTMN. Based on the evidence, we find that A-O apparently willfully and repeatedly violated Section 11.35(a) of the Rules by failing to have EAS equipment installed and

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based on A-O's representation that the antenna would be mounted with a center of radiation 18 meters AGL.

<sup>21</sup> A-O indicated that it had operated at up to 60% of authorized power. We use the lower 40% figure because that was the power when the staff took measurements. The RF radiation problem would have been even worse when the station operated at 41%-60% of authorized power.

<sup>22</sup> 47 C.F.R. § 11.35(a).

operational.

20. Section 73.1125(a) of the Rules states in part that “[e]ach AM, FM, or TV broadcast station shall maintain a main studio at one of the following locations: (1) within the station’s community of license; (2) at any location within the principal community contour of any AM, FM, or TV Broadcast station licensed to the station’s community of license; or (3) within twenty-five miles from the reference coordinates of the center of its community of license as described in §73.208(a)(1).”<sup>23</sup> In addition, the station’s main studio must serve the needs and interests of the residents of the station’s community of license. To fulfill this function, a station must, among other things, maintain a meaningful managerial and staff presence at its main studio.<sup>24</sup> The Commission has generally defined “meaningful presence” as full-time managerial and full-time staff personnel and has stated that there must be “management and staff presence” on a full-time basis during normal business hours to be considered “meaningful.”<sup>25</sup> Further, with respect to management personnel, the Commission has stated that they need not be “chained to their desks” but that they would be required to report to work at the main studio on a daily basis, spend a substantial amount of time there, and use the main studio as their “home base.”<sup>26</sup> Although A-O’s owner stated that he was temporarily using KTMN’s transmitter building as a main studio, it is apparent that KRMN had no main studio presence in the community at the time of the inspection. The transmitter building was contained within a locked fence and therefore was inaccessible to the public; there was little room, if any, for more than one person to move around in the transmitter building; there was no listing for KTMN or A-O in the local telephone directory; and there was no public inspection file. Moreover, A-O did not maintain a meaningful management and staff presence at the transmitter site. In this regard, A-O’s owner told the agents that he visited the site every day, or every other day, but had no other personnel present at the transmitter site when he was not there. Therefore, based on the evidence, we conclude that A-O failed to maintain a main studio in apparent willful and repeated violation of Section 73.1125 of the Rules.<sup>27</sup>

21. Licensees are also responsible for operating their broadcast stations within tolerances specified by applicable technical rules contained in this part and in accordance with the terms of the station authorization. Section 73.1400 of the Rules allows stations to employ various methods or levels of transmission system monitoring and supervision to preclude out-of-tolerance operation and to ensure compliance with the transmission system control requirements of Section 73.1350. At the time of the inspection, A-O’s owner admitted that he did not have ongoing supervision of the transmission system by a station employee or other person designated by the licensee, did not have an automatic transmission system to alert a contact person in the event of a technical malfunction, and did not have a remote control whereby the transmission system could be monitored and controlled for compliance with Section 73.1350. Use of a consumer-grade portable receiver to tune into the station does not meet the transmission system monitoring and control requirements of Section 73.1400. Based on the evidence, we further find that A-O apparently willfully and repeatedly violated Section 73.1400 of the Rules by failing

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<sup>23</sup> 47 C.F.R. § 73.1125(a).

<sup>24</sup> See *Main Studio and Program Origination Rules*, 2 FCC Rcd 3215, 3217-18 (1987), *clarified*, 3 FCC Rcd 5024, 5026 (1988).

<sup>25</sup> *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 (1991), *clarified*, 7 FCC Rcd 6800 (1992) (“*Jones Eastern*”).

<sup>26</sup> *Jones Eastern*, 7 FCC Rcd at 6802.

<sup>27</sup> See *B&C Kentucky, LLC*, 16 FCC Rcd 9305 (Mass Media Bur., Video Services Div., 2001) (concluding that a television licensee’s transmitter building was not a main studio where no employees regularly worked at that location, no production equipment or station files were maintained there, and the building was contained within a locked fence and therefore was inaccessible to the public).

to have adequate transmission system monitoring and control.

22. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines ("Forfeiture Policy Statement")*<sup>28</sup> does not specify a base forfeiture for violation of the RFR maximum permissible exposure limits for transmitting tower antennas in Section 1.1310.<sup>29</sup> However, the FCC has set a base forfeiture amount of \$10,000 for failure to comply with other public safety related rules, such as prescribed antenna structure lighting and/or marking rules related to public and private air navigation safety. Based on the public safety nature of the RFR maximum permissible exposure limits, we conclude that a base forfeiture amount of \$10,000 for failure to comply with the RFR exposure limits is appropriate. The *Forfeiture Policy Statement* sets a base forfeiture amount of \$8,000 for failure to install EAS equipment,<sup>30</sup> a base amount of \$7,000 for failure to maintain a main studio,<sup>31</sup> and a base amount of \$3,000 for violation of transmitter control and metering requirements.<sup>32</sup> Thus, the total base forfeiture amount for all of A-O's violations is \$28,000.

23. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,<sup>33</sup> which include 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. We believe that the seriousness of the safety violations, including the high levels of RFR resulting from A-O's failure to construct the station according to the terms of the license and failure to comply with the special operating conditions, coupled with the lack of installed and operational EAS equipment, failure to maintain a main studio, and failure to maintain positive control of the transmitter, warrant the proposed \$28,000 forfeiture amount. Accordingly, applying the *Forfeiture Policy Statement* and statutory factors to the instant case, we conclude that A-O is apparently liable for a \$28,000 forfeiture.

#### IV. Ordering Clauses

24. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules,<sup>34</sup> A-O Broadcasting Corp., is hereby NOTIFIED of its APPARENT

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<sup>28</sup> 12 FCC Rcd 17087 (1997), *recon denied*, 15 FCC Rcd 303 (1999).

<sup>29</sup> The fact that the *Forfeiture Policy Statement* does not specify a base amount does not indicate that no forfeiture should be imposed. The *Forfeiture Policy Statement* states that "... any omission of a specific rule violation from the ... [forfeiture guidelines] ... should not signal that the Commission considers any unlisted violation as nonexistent or unimportant. *Forfeiture Policy Statement*, 12 FCC Rcd at 17099. The Commission retains the discretion, moreover, to depart from the *Forfeiture Policy Statement* and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in Section 503 of the Act. *Id.*

<sup>30</sup> See e.g., *Marie L. Salazar*, 17 FCC Rcd 14090, 14093 (2002) ("*Salazar*") (proposing an \$8,000 forfeiture for failure to install and maintain operational EAS equipment); *Arnold Broadcasting Company, Inc.*, 16 FCC Rcd 13600, 13602 (2001) ("*Arnold*") (assessing an \$8,000 forfeiture for failure to install and maintain operational EAS equipment).

<sup>31</sup> See e.g., *Salazar*, 17 FCC Rcd at 14093 (proposing a \$7,000 forfeiture for violation of the main studio rule); *American Broadcasting Education Foundation*, 15 FCC Rcd 8630 (Enf. Bur. 2000) (assessing a \$7,000 forfeiture for violation of the main studio rule).

<sup>32</sup> *Arnold*, 16 FCC Rcd at 13602; *Rego, Inc.*, 16 FCC Rcd 16795, 16797 (Enf. Bur., 2001) (both assessing a \$3,000 forfeiture for violation of transmitter control requirements).

<sup>33</sup> 47 U.S.C. § 503(b).

<sup>34</sup> 47 C.F.R. § 1.80.

LIABILITY FOR A FORFEITURE in the amount of twenty-eight thousand dollars (\$28,000) for willfully and repeatedly violating Sections 1.1310, 11.35, 73.1125, and 73.1400 of the Rules.

25. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, A-O Broadcasting Corp., SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

26. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN) and the NAL/Acct. No. referenced in the caption.

27. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau - Technical and Public Safety Division and must include the NAL/Acct. No. referenced in the caption.

28. 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.

29. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>35</sup>

30. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Enforcement Bureau – Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities ("OCBO") set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

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<sup>35</sup> See 47 C.F.R. § 1.1914.

31. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested to A-O Broadcasting Corp., Attention: Robert Flotte, 3001 North Florida Avenue, Alamogordo, New Mexico 88310-9794, and its counsel, Paul Brown, Esq., Wood, Maines & Brown, Chartered, 1827 Jefferson Place, N.W., Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

October 2002

## FCC List of Small Entities

As described below, a “small entity” may be a small organization, a small governmental jurisdiction, or a small business.

<b>(1) Small Organization</b>	
Any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.	
<b>(2) Small Governmental Jurisdiction</b>	
Governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.	
<b>(3) Small Business</b>	
Any business concern that is independently owned and operated and is not dominant in its field, <i>and</i> meets the pertinent size criterion described below.	
<b>Industry Type</b>	<b>Description of Small Business Size Standards</b>
<i>Cable Services or Systems</i>	
Cable Systems	Special Size Standard – <b>Small Cable Company</b> has 400,000 Subscribers Nationwide or Fewer
Cable and Other Program Distribution	\$12.5 Million in Annual Receipts or Less
Open Video Systems	
<i>Common Carrier Services and Related Entities</i>	
Wireline Carriers and Service providers	1,500 Employees or Fewer
Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers	
<b>Note:</b> With the exception of Cable Systems, all size standards are expressed in either millions of dollars or number of employees and are generally the average annual receipts or the average employment of a firm. Directions for calculating average annual receipts and average employment of a firm can be found in 13 C.F.R. §121.104 and 13 C.F.R. § 121.106, respectively.	
<i>International Services</i>	
International Broadcast Stations	\$12.5 Million in Annual Receipts or Less
International Public Fixed Radio (Public and Control Stations)	
Fixed Satellite Transmit/Receive Earth Stations	
Fixed Satellite Very Small Aperture Terminal Systems	
Mobile Satellite Earth Stations	
Radio Determination Satellite Earth Stations	

Geostationary Space Stations	
Non-Geostationary Space Stations	
Direct Broadcast Satellites	
Home Satellite Dish Service	
<b>Mass Media Services</b>	
Television Services	\$12 Million in Annual Receipts or Less
Low Power Television Services and Television Translator Stations	
TV Auxiliary, Special Broadcast and Other Program Distribution Services	
Radio Services	\$6 Million in Annual Receipts or Less
Radio Auxiliary, Special Broadcast and Other Program Distribution Services	
Multipoint Distribution Service	Auction Special Size Standard – <b>Small Business</b> is less than \$40M in annual gross revenues for three preceding years
<b>Wireless and Commercial Mobile Services</b>	
Cellular Licensees	1,500 Employees or Fewer
220 MHz Radio Service – Phase I Licensees	
220 MHz Radio Service – Phase II Licensees	Auction special size standard - <b>Small Business</b> is average gross revenues of \$15M or less for the preceding three years (includes affiliates and controlling principals) <b>Very Small Business</b> is average gross revenues of \$3M or less for the preceding three years (includes affiliates and controlling principals)
700 MHz Guard Band Licensees	
Private and Common Carrier Paging	
Broadband Personal Communications Services (Blocks A, B, D, and E)	1,500 Employees or Fewer
Broadband Personal Communications Services (Block C)	Auction special size standard - <b>Small Business</b> is \$40M or less in annual gross revenues for three previous calendar years <b>Very Small Business</b> is average gross revenues of \$15M or less for the preceding three calendar years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Broadband Personal Communications Services (Block F)	
Narrowband Personal Communications Services	
Rural Radiotelephone Service	1,500 Employees or Fewer
Air-Ground Radiotelephone Service	
800 MHz Specialized Mobile Radio	Auction special size standard - <b>Small Business</b> is \$15M or less average annual gross revenues for three preceding calendar years
900 MHz Specialized Mobile Radio	
Private Land Mobile Radio	1,500 Employees or Fewer
Amateur Radio Service	N/A
Aviation and Marine Radio Service	1,500 Employees or Fewer
Fixed Microwave Services	
Public Safety Radio Services	<b>Small Business</b> is 1,500 employees or less <b>Small Government Entities</b> has population of less than 50,000 persons
Wireless Telephony and Paging and Messaging	1,500 Employees or Fewer
Personal Radio Services	N/A
Offshore Radiotelephone Service	1,500 Employees or Fewer
Wireless Communications Services	<b>Small Business</b> is \$40M or less average annual gross revenues for three preceding years <b>Very Small Business</b> is average gross revenues of \$15M or less for the preceding three years
39 GHz Service	

Multipoint Distribution Service	Auction special size standard (1996) – <b>Small Business</b> is \$40M or less average annual gross revenues for three preceding calendar years Prior to Auction – <b>Small Business</b> has annual revenue of \$12.5M or less
Multichannel Multipoint Distribution Service	\$12.5 Million in Annual Receipts or Less
Instructional Television Fixed Service	
Local Multipoint Distribution Service	Auction special size standard (1998) – <b>Small Business</b> is \$40M or less average annual gross revenues for three preceding years <b>Very Small Business</b> is average gross revenues of \$15M or less for the preceding three years
218-219 MHz Service	First Auction special size standard (1994) – <b>Small Business</b> is an entity that, together with its affiliates, has no more than a \$6M net worth and, after federal income taxes (excluding carryover losses) has no more than \$2M in annual profits each year for the previous two years New Standard – <b>Small Business</b> is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) <b>Very Small Business</b> is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Satellite Master Antenna Television Systems	\$12.5 Million in Annual Receipts or Less
24 GHz – Incumbent Licensees	1,500 Employees or Fewer
24 GHz – Future Licensees	<b>Small Business</b> is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) <b>Very Small Business</b> is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
<b>Miscellaneous</b>	
On-Line Information Services	\$18 Million in Annual Receipts or Less
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturers	750 Employees or Fewer
Audio and Video Equipment Manufacturers	
Telephone Apparatus Manufacturers (Except Cellular)	1,000 Employees or Fewer
Medical Implant Device Manufacturers	500 Employees or Fewer
Hospitals	\$29 Million in Annual Receipts or Less
Nursing Homes	\$11.5 Million in Annual Receipts or Less
Hotels and Motels	\$6 Million in Annual Receipts or Less
Tower Owners	(See Lessee's Type of Business)