

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

In the Matter of
RJM Communications, Inc.
Kalamazoo, Michigan
File No. EB-02-TP-436
NAL/Acct. No. 200332700026
FRN 0008028938

FORFEITURE ORDER

Adopted: January 30, 2004

Released: February 3, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of one thousand five hundred dollars (\$1,500) to RJM Communications, Inc. ("RJM"), licensee of radio station WGSR(AM), Fernandina Beach, Florida, for willful and repeated violation of Sections 73.1125 and 73.1745(a) of the Commission's Rules ("Rules") and for willful violation of Section 73.3526(c)(1) of the Rules. The noted violations involve RJM's failure to maintain a presence at its main studio, operation in excess of authorized nighttime operating power, and failure to make station WGSR(AM)'s public inspection file available during regular business hours.

II. BACKGROUND

2. On July 15, 2003, the Commission's Tampa, Florida Office ("Tampa Office") released a Notice of Apparent Liability for Forfeiture ("NAL") to RJM for a forfeiture in the amount of twenty-one thousand dollars (\$21,000). RJM filed a response on August 1, 2003. In its response, RJM does not challenge the findings of the NAL. Rather, RJM seeks reduction or cancellation of the forfeiture based upon its inability to pay.

III. DISCUSSION

3. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"), Section 1.80 of the Rules, and The

1 47 C.F.R. §§ 73.1125 and 73.1745(a).

2 47 C.F.R. § 73.3526(c)(1).

3 See Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200332700026 (Enf. Bur. Tampa Office, July 15, 2003).

4 47 U.S.C. § 503(b).

5 47 C.F.R. § 1.80.

*Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines.*⁶ In examining RJM's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷

4. Based on the findings of the *NAL* and RJM's response thereto, we find that RJM's violation of Sections 73.1125 and 73.1745(a) of the Rules was willful⁸ and repeated.⁹ We also find that RJM's violation of Section 73.3526(c)(1) of the Rules was willful. In support of its request for cancellation, RJM submits federal income tax returns for tax years 2000, 2001, and 2002 to demonstrate its inability to pay the monetary forfeiture. After reviewing the financial documentation, we conclude that reduction of the \$21,000 forfeiture to \$1,500 is warranted in this case.

5. There is no evidence that RJM is in compliance with Sections 73.1125, 73.1745(a) and 73.3526(c)(1) of the Rules with respect to main studio staffing, excess nighttime operating power, and the public inspection file. Accordingly, we will require, pursuant to Section 308(b) of the Act,¹⁰ that RJM report to the Enforcement Bureau no more than thirty (30) days following the release of this *Order* how it has achieved compliance with Sections 73.1125, 73.1745(a), and 73.3526(c)(1) of the Rules. RJM's report must be submitted in the form of an affidavit signed by an officer or director of RJM.

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹¹ RJM Communications, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one thousand five hundred dollars (\$1,500) for its violation of Sections 73.1125, 73.1745(a), and 73.3526(c)(1) of the Rules.

7. **IT IS FURTHER ORDERED** that, pursuant to Section 308(b) of the Act, RJM must submit the report described in Paragraph 5, above, within no more than thirty (30) days following the release of this *Order*, to Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Room 7-A728, Washington, D.C. 20554, Attention: Jacqueline Ellington, Esq.

8. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ 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,' ... 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).

⁹ As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn 56 (2003).

¹⁰ 47 U.S.C. § 308(b).

¹¹ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

Act.¹² Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200332700026 and FRN 0008028938. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹³

9. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to RJM Communications, Inc., 1218 S. Park Street, Kalamazoo, Michigan 49001, and its counsel, John Neely, Esq. at Miller and Neely, P.C., 6900 Wisconsin Avenue, Suite 704, Bethesda, Maryland 20815.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹² 47 U.S.C. § 504(a).

¹³ See 47 C.F.R. § 1.1914.