

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

In the Matter of)	
)	
L.T. Simes II & Raymond Simes)	
)	File Number EB-02-OR-196
Licensee of FM Radio Station KAKJ, Marianna,)	
Arkansas, and Owner of Unregistered Antenna)	NAL/Acct.No. 200232620007
Structure Located at 34° 47' 20" N Latitude by)	
090° 47' 08" W Longitude near Marianna,)	FRN 0007-2844-17
Arkansas)	
)	
West Helena, Arkansas)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: July 22, 2002

By the Enforcement Bureau, New Orleans Office:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find L.T. Simes II & Raymond Simes (“Simes”), licensee of FM radio station KAKJ, Marianna, Arkansas, and owner of unregistered antenna structure located at 34° 47' 20" North latitude by 090° 47' 08" West longitude near Marianna, Arkansas, apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000) for willful violation of Sections 11.35(a), 17.4(a), and 73.1350(a) of the Commission’s Rules (“Rules”).¹ Specifically, we find L.T. Simes II & Raymond Simes apparently liable for failing to ensure Emergency Alert System (“EAS”) equipment was installed and operational, failing to register their antenna structure with the Commission, and failing to construct the transmitter site and antenna structure at its licensed geographical coordinates.

II. BACKGROUND

2. On May 22, 2002, an agent from the FCC Enforcement Bureau’s New Orleans Office inspected station KAKJ’s antenna structure at a location determined by the agent to be at 34° 47' 20" North latitude by 090° 47' 08" West longitude near Marianna, Arkansas. No Antenna Structure Registration (“ASR”) number was observed anywhere near the base of the structure.

3. On May 23, 2002, the agent inspected the studios of KAKJ in West Helena, Arkansas, accompanied by the licensee, Mr. Raymond Simes. At the time of the inspection, the station did not have EAS equipment installed or operational. There were no station logs that would indicate the EAS equipment had been removed for repairs or that there had ever been operational EAS equipment used at

¹ 47 C.F.R. §§ 11.35(a), 17.4(a), and 73.1350(a).

the station.² Additionally, Mr. Simes confirmed that the antenna structure observed on May 22, 2002 near Marianna, Arkansas supported the transmitting antenna for KAKJ and was owned by the licensee. The KAKJ station authorization showed the antenna structure to be at least 330 feet in height and located at geographical coordinates 34° 47' 14" North latitude by 090° 46' 03" West longitude. This places the actual location of the KAKJ transmitter site and antenna structure approximately one mile West of the authorized location. Finally, Mr. Simes stated that he believed that the structure was properly registered, but could provide no documentation to support this claim.

4. On June 14, 2002, a search of the Commission's ASR database did not find any records to show that the antenna structure for station KAKJ had been registered, or any applications filed to register the structure.

III. DISCUSSION

5. Section 11.35(a) of the Rules sets forth that broadcast stations are responsible for ensuring 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 are in operation. On May 23, 2002, there was no installed or operational EAS equipment at the studios of KAKJ.

6. Section 17.4(a) of the Rules states that, "[e]ffective July 1, 1996, the owner of any proposed or existing antenna structure that requires notice of proposed construction to the Federal Aviation Administration ("FAA") must register the structure with the Commission." Simes owned the antenna structure used as part of radio station KAKJ. This structure required notice to the FAA, and thus required registration with the Commission, because the structure height exceeded 200 feet. On June 14, 2002, there were no Commission records indicating that this structure had been registered.

7. Section 73.1350(a) of the Rules requires that each licensee is responsible for maintaining and operating its broadcast station in accordance with the terms of the station authorization. On May 22, 2002, KAKJ's transmitter site and antenna structure were found to be located at geographical coordinates 34° 47' 20"N Latitude, 090° 47' 08"W Longitude, approximate one mile from the authorized location of 34° 47' 14"N Latitude, 090° 46' 03"W Longitude.

8. Based on the evidence before us, we find Simes willfully³ violated Sections 11.35(a), 17.4(a), and 73.1350(a) of the Rules by failing to ensure that EAS equipment was installed and operational at KAKJ, by failing to register KAKJ's antenna structure with the Commission, and by failing to operate in accordance with the terms of the station authorization as the KAKJ transmitter site and antenna structure

² EAS activations and tests, failures to receive such tests, and EAS equipment malfunctions must be recorded in the station log. See 47 C.F.R. §§ 11.35(a)-(b), 11.55(c)(7) and 11.61(b).

³ 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" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

were not at the licensed geographical coordinates.

9. Pursuant to Section 1.80(b)(4) of the Rules,⁴ the base forfeiture amount for EAS equipment not installed or operational is \$8,000, the base forfeiture amount for failing to register its antenna structure (failure to file required forms or information) is \$3,000, and the base forfeiture amount for operating at an unauthorized location is \$4,000. 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 Communications Act of 1934, as amended (“Act”), 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.”⁵ Considering the entire record and applying the factors listed above, this case warrants a \$15,000 forfeiture.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁶ and Sections 0.111, 0.311 and 1.80 of the Rules,⁷ L.T. Simes II & Raymond Simes is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of fifteen thousand dollars (\$15,000) for willful violation of Sections 11.35(a), 17.4(a), and 73.1350(a) of the Rules by failing to ensure that EAS equipment was installed and operational at station KAKJ, failing to register KAKJ’s antenna structure with the Commission, and failing to operate in accordance with the terms of the station authorization by failing to construct the transmitter site and antenna structure for KAKJ at the licensed geographical coordinates.

11. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *NAL*, L.T. Simes II & Raymond Simes SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. 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 should note the *NAL*/Acct. No. and FRN referenced above. Request for payment of the full amount of *NAL* under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

13. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE *NAL*/Acct. No. referenced above.

⁴ 47 C.F.R. § 1.80(b)(4).

⁵ 47 U.S.C. § 503 (b)(2)(D).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁸ *See* 47 C.F.R. § 1.1914.

14. 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.

15. IT IS FURTHER ORDERED THAT a copy of this *NAL* shall be sent by regular mail and Certified Mail Return Receipt Requested to L.T. Simes II & Raymond Simes, P.O. Box 2870, West Helena, Arkansas, 72390.

FEDERAL COMMUNICATIONS COMMISSION

James C. Hawkins
District Director, New Orleans Office
Enforcement Bureau