

Federal Communications Commission

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

In the Matter of)	
)	File No. EB-03-CF-334
)	
JMK Communications, Inc.)	NAL/Acct. No. 200432340004
WPWC)	
Dumfries-Triangle, VA)	FRN: 0006-1615-09

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 4, 2004

By the District Director, Columbia Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that JMK Communications, Inc. ("JMK") has apparently violated Sections 11.35(a), 73.1745(a), 73.3526(e)(5) and 73.3526(e)(12) of the Commission's Rules¹ ("Rules") by failing to insure that EAS monitoring and transmitting functions are available and operational during the times the station is in operation, operating with unauthorized times and modes, and failing to place the most current ownership report, written comments and suggestions from the public and a list of programs that have provided the station's most significant treatment of community issues in the public inspection file. We conclude that JMK is apparently liable for forfeiture in the amount of twenty two thousand dollars (\$22,000).

II. BACKGROUND

2. On July 1, 2003, an agent from the Commission's Columbia Maryland office attempted an inspection of station WPWC, Dumfries-Triangle, Virginia for compliance with FCC Rules. The agent went to 7601 Little River Turnpike, Annandale, VA. The agent was told by JMK personnel that the main studio for WPWC was not at this location, that there was no programming capability for WPWC at this location and that no one at this location had anything to do with WPWC. However, the agent was provided an incomplete public file for station WPWC by the JMK personnel. The agent observed a "quarterly issues, 2002, 2003" sheet which merely indicates that "5 ea. 60 sec. Spots daily" aired during the 1st quarter. It was unclear if these "spots" aired during 2002 or 2003, and the time of day was for the programming was not specified. The agent noted a similar entry for the second, third and fourth quarters. Again, the times that such "spots" aired were not shown and the year was unclear. Further, the public file did not include copies of the current, most recent ownership reports. The agent was unable to meet with other JMK who could help him complete an inspection. He made arrangements to continue the inspection the next day.

¹47 C.F.R. §§ 11.35(a), 73.1745(a), 73.3526(e)(5) and 73.3526(e)(12).

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3. On July 2, 2003, the agent met the chief operator at the station transmitter location in Dumfries-Triangle, Virginia to complete the inspection. The agent found station logs, including transmitter, antenna system operating parameters and EAS test records. The agent found that the EAS receiver was not tuned to the proper station, WJZW, and reception of second station, WGMS, was very noisy. The agent noted that the EAS equipment was installed at the station's unattended transmitter, and noted its monitoring and transmitting functions were not available to the station's operators at either the main studio or the Woodbridge, VA studio. The chief operator confirmed that the control functions were only available at the station's transmitter. Further, the chief operator confirmed that the main studio is at 7601 Little River Turnpike in Annandale and indicated that a secondary studio is located at 14416 Jefferson Davis Highway in Woodbridge, VA.

4. On July 2, 2003, the agent visited WPWC's secondary studio in Woodbridge, VA. The agent was provided a public file issues/ programs list which consisted of a single sheet with only "Quarterly Issues: 2003 1st quarter: Drunk Driving Awareness 3 hrs." written on it. That document did not show the dates, times, duration and title of the program addressing the issue. Lists for other quarters were not provided. During the inspection, the agent requested and was provided copies of the transmitter operating logs.

5. On August 7, 2003, the Columbia Office issued a Letter of Inquiry to JMK in order to clarify questionable details of operations at WPWC. In response to that letter, JMK cleared up the confusion about the location of the main studio and associated staff and records, indicating that the main studio is at the Annandale address. Concerning the public file issues/programs list, JMK confirmed the inspecting agent's finding stating; "we have not maintained a complete formal listing, as contemplated by FCC Rules, of the specific issues addressed in this program..."

6. Further, JMK points out in their response to the letter of inquiry that the Annandale studio includes staff of station WTRI licensed to Brunswick, Maryland. JMK was previously cited for violation of Section 73.3526(e)(12) at WTRI, Brunswick, Maryland in a Notice of Violation issued December 16, 2002. Additionally, JMK points out that their logs accurately reflect the station operation.

7. The agent reviewed WPWC station logs provided to him at the inspection for the period April 1, 2003 through July 2, 2003. The agent found that, according to the station logs, WPWC operated with its daytime power and antenna during nighttime hours. The daytime authorized power is 1080 watts while nighttime is 540 watts. The daytime antenna parameters are different from the nighttime parameters. The logs show that the station changed to its night power and antenna at 8:30 PM EST instead of the authorized 7:15 PM EDT (8:15 EST) on May 4, 2003 and May 8 through May 19, 2003.

8. On 8/13/2003 and 8/20/2003, the agent inspected radio stations WJZW and WGMS, respectively. He reviewed their EAS logs noting the times that these stations transmitted EAS tests and alerts that WPWC should have received. He reviewed WPWC logs and compared. He found that for the period May 7, 2003 through July 2, 2003, WPWC logs had missing and inaccurate received EAS test times. The agent found no entries in the station log indicating that the EAS equipment had malfunctioned.

III. DISCUSSION

9. Section 11.35(a) of the Rules requires 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 station and systems are in operation. The

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EAS equipment was improperly tuned on July 2, 2003 and the monitoring and transmitting functions were not available to the station operators at their normal duty position. Further, log entries, compared to EAS logs of the two sending stations, show that JMK's EAS equipment failed on or about May 6, 2003 and continued until the FCC inspection on July 2, 2003.

10. Section 73.1745(a) of the Rules requires that no broadcast station shall operate at times, or with modes or power, other than those specified in the station license. JMK operated with daytime antenna (mode) and power during nighttime hours.

11. Section 73.3526(e)(5) of the Rules requires commercial broadcast stations place a copy of the most recent, complete ownership report in the public inspection file. JMK's most recent report was not included in the file.

12. Section 73.3526(e)(12) of the Rules requires commercial broadcast stations place in the public inspection file every 3 months a list of programs that have provided the station's most significant treatment of community issues during the preceding three months. The list shall include a brief narrative describing what issues were given significant treatment and the programming that provided that treatment. The description shall include, but shall not be limited to, the time, date, duration, and title of each program in which the issue was treated. The 2 lists that JMK presented to the inspecting agent as being the issues/programs list were different from each other and did not contain the required information.

13. Based on the evidence before us, we find that WKLC, Inc. willfully² and repeatedly³ violated Sections 11.35(a), 73.1745(a), 73.3526(e)(5) and 73.3526(e)(12) of the Rules by failing to have EAS equipment properly installed and working, by exceeding power limits, and for failure to maintain records in the public file. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*")⁴, sets the base forfeiture amounts at \$8,000 for failure to comply with the rules relating to the installation and operability of EAS equipment, \$4,000 for exceeding power limits and \$10,000 for failure to comply with the public file rules. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934 ("Act"), as amended,⁵ 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. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a twenty two thousand dollar (\$22,000) monetary forfeiture is warranted.

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to 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).

³ Section 312(f)(2), which also applies to Section 503(b), provides: [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.

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

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IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁶ and Sections 0.111, 0.311 and 1.80 of the Rules,⁷ JMK is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of twenty thousand dollars (\$22,000) for willfully violating Sections 11.35(a), 73.1745(a), 73.3526(e)(5) and 73.3526(e)(12) of the Rules.

15. 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, JMK SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

16. 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. 200432340004, and FRN 0006-1615-09.

17. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200432340004.

18. 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.

19. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

20. 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 Spectrum Enforcement 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

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, and 0.311.

⁸ See 47 C.F.R. § 1.1914.

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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.

21. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt requested, to JMK Communications, Inc., 4525 Wilshire Boulevard, Los Angeles, California 90010.

FEDERAL COMMUNICATIONS COMMISSION

Charles C. Magin
District Director
Columbia Office

Attachment A – FCC List of Small Entities, October 2002