

Federal Communications Commission

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

In the Matter of)	
)	File Number EB-04-OR-094
Jason Konarz)	
Licensee of WQMA(AM))	NAL/Acct. No.200432620004
Marks, Mississippi)	
)	FRN 0005015425
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: July 21, 2004

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 Jason Konarz (“Konarz”), licensee of radio station WQMA(AM), Marks, Mississippi, apparently liable for a forfeiture in the amount of twenty thousand dollars (\$20,000) for willful and repeated violation of Sections 11.35(a), 73.1745(a) and 73.3526(c) of the Commission's Rules (“Rules”).¹ Specifically, we find Konarz apparently liable for failing to maintain operational Emergency Alert System (“EAS”) equipment, operating with excessive power and then failing to discontinue operation at night, and failing to make available for inspection all of the required materials in the station’s public inspection file.

II. BACKGROUND

2. On May 11, 2004, an agent of the FCC Enforcement Bureau’s New Orleans Field Office (“New Orleans Office”) monitored WQMA(AM)’s signal from before sunset until 8:30 p.m. Central Daylight Time (“CDT”). The station’s programming signed off at 7:20 p.m. CDT, however, it continued to transmit an un-modulated carrier until at least 8:30 p.m. CDT. The agent made field strength measurements of the station’s signal during this time period and determined that WQMA(AM) failed to discontinue operation at 8:00 p.m. CDT in accordance with its station authorization. WQMA(AM) is authorized as a daytime only station with a power of 250 watts.

3. On May 12, 2004, the agent again monitored WQMA(AM)’s signal from before sunset until 8:30 p.m. CDT. The station repeated the previous night’s procedure by signing off at 7:20 p.m. CDT and then continuing to transmit an un-modulated carrier until at least 8:30 p.m. CDT. The agent made field strength measurements verifying that WQMA(AM) again failed to discontinue operation at 8:00 p.m. CDT.

4. On May 13, 2004, the agent made field strength measurements and then inspected WQMA(AM). At the time of the inspection, the EAS encoder/decoder would not function and only one receiver was present. Station personnel reported that the EAS encoder/decoder had been broken between three and eighteen months. There were no logs or other evidence that the EAS encoder/decoder had ever

¹47 C.F.R. §§ 11.35(a), 73.1745(a) and 73.3526(c).

been in operation or that it was being repaired.² Also during the inspection, it was determined that the station's transmitter power output meter displayed 425 watts, 170% of the authorized power of 250 watts. Finally, the station owner was able to produce the station authorization and a contour map for WQMA(AM), but was unable to find any other elements of the station's public file

III. DISCUSSION

5. Section 11.35(a) of the Rules requires that broadcast stations maintain operational EAS encoders, decoders and attention signal generating and receiving equipment so that monitoring and transmitting functions are available during the times the stations are in operation.³ On May 13, 2004, WQMA(AM)'s EAS unit was not functional. All personnel questioned at WQMA(AM) stated that the equipment had been not been operational for three to eighteen months. Furthermore, there was no evidence or logs showing that the unit had been functional at any time, nor were there log entries indicating that the equipment was under repair

6. Section 73.1745 of the Rules states that “[n]o broadcast station shall operate at times, or with modes or power, other than those specified and made a part of the license, unless otherwise provided in this part.”⁴ WQMA(AM)'s license authorizes daytime-only operation with a power of 250 watts. On May 11 and May 12, 2004, WQMA(AM) failed to discontinue operation as specified and continued to operate at least 30 minutes after local sunset each night. In addition, on May 13, 2004, WQMA(AM)'s transmitter output power was displayed as 425 watts. Field strength measurements made on May 11, 12, and 13, 2004 showed that the signal levels remained the same all three days. Accordingly, WQMA(AM) operated with excessive power all three days.

7. Section 73.3526(a)(2) of the Rules requires that every permittee or licensee of an AM or FM station shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(1) through (e)(10) and paragraphs (e)(12) through (e)(14) of this section.⁵ Section 73.3526(b) of the Rules requires the public inspection file be maintained at the station's main studio.⁶ Section 73.3526(c) of the Rules requires the file be available for public inspection at any time during regular business hours.⁷ On May 13, 2004, an inspection of station WQMA(AM)'s public inspection file revealed that required material was missing, specifically everything other than the current station authorization and the most current contour map. Accordingly, complete public inspection file material was not available for inspection during regular business hours at the WQMA(AM) main studio.

8. Based on the evidence before us, we find Konarz willfully⁸ and repeatedly⁹ violated

²See 47 C.F.R. § 11.35(b).

³47 C.F.R. § 11.35(a).

⁴47 C.F.R. § 73.1745.

⁵47 C.F.R. § 73.3526(a)(2).

⁶47 C.F.R. § 73.3526(b).

⁷47 C.F.R. § 73.3526(c).

⁸Section 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 (continued....)

Sections 11.35(a), 73.1745(a), and 73.3526(c) of the Rules by failing to maintain operational EAS equipment, operating with excessive power and failing to discontinue operation at sunset, and failing to make available for inspection all of the required materials in the station's public inspection file.

9. Pursuant to Section 1.80(b)(4) of the Rules,¹⁰ the base forfeiture amount for failure to maintain operational EAS equipment is \$8,000, the base forfeiture amount for operation with excessive power and failure to discontinue operation after sunset is \$4,000, and the base forfeiture amount for violation of the public file rule is \$10,000. 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, 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.¹¹ Because the station maintained a portion of the required items in the public inspection file, a downward adjustment of the base forfeiture for that violation from \$10,000 to \$8,000 is warranted. Considering the entire record and applying the factors listed above, this case warrants a \$20,000 forfeiture.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended,¹² and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,¹³ Jason Konarz is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for willful and repeated violation of Sections 11.35(a), 73.1745(a) and 73.3526(c) of the Rules by for failing to maintain operational Emergency Alert System equipment, operating with excessive power and then failing to discontinue operation at night, and failing to make available for inspection all of the required materials in the station's public inspection file.

11. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *NAL*, Jason Konarz **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. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th

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any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁹The 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).

¹⁰47 C.F.R. § 1.80(b)(4).

¹¹47 U.S.C. § 503(b)(2)(D).

¹²47 U.S.C. § 503(b).

¹³47 C.F.R. §§ 0.111, 0.311, 1.80.

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Street, S.W., Washington, D.C. 20554.¹⁴

13. The response, if any, must be mailed to the Federal Communications Commission, New Orleans Office, Suite 460, 2424 Edenborn Avenue, Metairie, LA 70001, within thirty days of the release date of this *NAL* and **MUST INCLUDE THE NAL/Acct. No.** referenced above.

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. 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 Regional Counsel, FCC, EB, South Central Region, 520 NE Colbern Road, Second Floor, Lee’s Summit, MO 64086. 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.

16. **IT IS FURTHER ORDERED** that a copy of this *NAL* shall be sent by regular mail and Certified Mail Return Receipt Requested to Jason Konarz, Route 2, Box 290A, Marks, Mississippi 38646.

FEDERAL COMMUNICATIONS COMMISSION

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

Attachment

¹⁴See 47 C.F.R. § 1.1914.