

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

In the Matter of)	
)	
KAGM-FM Joint Venture)	File No.: EB-FIELDWR-12-00001024
)	NAL/Acct. No.: 201232800008
Owner of Antenna Structure No. 1231632)	FRN: 0008899247
Strasburg, CO)	

ORDER

Adopted: June 2, 2014

Released: June 3, 2014

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Order, we find that KAGM-FM Joint Venture (KJV) failed to properly monitor and light its antenna structure located near Strasburg, Colorado. In light of KJV's poor financial condition and history of compliance, however, we do not impose a forfeiture. Nevertheless, we warn KJV that future violations may result in substantial forfeitures, regardless of its financial situation.

2. Specifically, we find that KJV willfully and repeatedly violated Section 303(q) of the Communications Act of 1934, as amended (Act),¹ and Sections 17.47(a) and 17.51(a) of the Commission's rules (Rules) with respect to antenna structure number 1231632 (the Antenna Structure).² The noted violations involved KJV's failure to: (1) monitor the Antenna Structure lighting on a daily basis; and (2) exhibit any obstruction lighting on the Antenna Structure after sunset.

II. BACKGROUND

3. On September 20, 2012, the Enforcement Bureau's Denver Office (Denver Office) issued a Notice of Apparent Liability for Forfeiture (NAL)³ for fifteen thousand dollars (\$15,000) to KJV for failing to monitor the Antenna Structure lighting on a daily basis, and for failing to exhibit any obstruction lighting on the Antenna Structure after sunset. In response to the NAL, KJV does not deny the violations, but states that it has a history of compliance with the Act and the Rules, and that it is unable to pay the forfeiture.⁴

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁵ Section 1.80 of the Rules,⁶ and the Forfeiture Policy Statement.⁷ In examining KJV's

¹ 47 U.S.C. § 303(q).

² 47 C.F.R. §§ 17.47(a), 17.51(a).

³ *KAGM-FM Joint Venture*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 11149 (Enf. Bur. 2012) (NAL). A comprehensive recitation of the facts and history of this case can be found in the NAL and is incorporated herein by reference.

⁴ See Response from KAGM-FM Joint Venture to Denver Office, Western Region, Enforcement Bureau (Nov. 2, 2012) (on file in EB-FIELDWR-12-00001024) (NAL Response). In its response to a Letter of Inquiry in this case, KJV affirmed under penalty of perjury that it had fixed the violations. NAL, 27 FCC Rcd at 11150.

⁵ 47 U.S.C. § 503(b).

response, Section 503(b)(2)(E) 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.⁸

5. We affirm the *NAL*'s finding that KJV violated Section 303(q) of the Act and Sections 17.47(a) and 17.51(a) of the Rules.⁹ Section 303(q) of the Act states that antenna structure owners shall maintain the painting and lighting of antenna structures as prescribed by the Commission. Section 17.51(a) of the Rules requires all red obstruction lighting to be exhibited from sunset to sunrise unless otherwise specified. Section 17.47(a) of the Rules states that owners of antenna structures "(1) shall make an observation of the antenna structure's lights at least once each 24 hours either visually . . . to insure that all such lights are functioning properly as required; or alternatively (2) shall provide and properly maintain an automatic alarm system designed to detect any failure of such lights and to provide indication of such failure to the owner"

6. The Antenna Structure is 95 meters above ground in overall height and is required to be painted and lit.¹⁰ As reflected in the *NAL*, on the night of February 27, 2012, an agent from the Denver Office observed that all of the lights on the Antenna Structure were extinguished. According to KJV, the light outage occurred when the power to the Antenna Structure was disconnected on November 9, 2011, due to non-payment of its electric bills. KJV also stated that it was not aware of the light outage and consequently did not report the outage to the FAA until after the Denver Office agent notified KJV of the extinguishment on February 27, 2012.¹¹ Based on the undisputed evidence, we conclude that KJV willfully and repeatedly violated Section 303(q) of the Act, and Sections 17.47(a) and 17.51(a) of the Rules by failing to: (1) monitor the Antenna Structure lighting on a daily basis; and (2) exhibit required obstruction lighting on the Antenna Structure after sunset.

7. In response to the *NAL*, KJV requests cancellation of the \$15,000 forfeiture, noting that it has a history of compliance with the Rules,¹² and asserting that it is unable to pay the forfeiture.¹³ It supports its inability to pay argument with extensive financial documentation, including three years of tax returns from each of the two partners of KJV as well as letters from two certified public accountants.¹⁴ We have reviewed our records and agree that KJV has a history of compliance with the Rules. Second, with regard to an individual's or entity's inability to pay claim, the Commission has determined that, in general, gross income or revenues are the best indicator of an ability to pay a forfeiture.¹⁵ We have reviewed the documents provide by KJV, specifically focusing on the income of the two partners of this joint venture, as

⁶ 47 C.F.R. § 1.80.

⁷ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ See *NAL*, *supra* note 3.

¹⁰ See Antenna Structure Registration database for antenna structure number 1231632. See also 47 C.F.R. § 17.21 (requiring antenna structures more than 60.96 meters in height to be painted and lighted). See also FAA Study # 2004-ANM-238-OE.

¹¹ See *NAL*, 27 FCC Rcd at 11151, para. 6.

¹² See *NAL Response* at 2.

¹³ See *NAL Response* at 1–2.

¹⁴ See *NAL Response* at 1–2, Attachments 1–4.

¹⁵ See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

well as the assets available to KJV.¹⁶ Based on the financial documents provided by KJV, we find sufficient basis to impose no forfeiture penalty due to demonstrated inability to pay.

8. Nevertheless, we find that it is appropriate to admonish KJV for willful and repeated violation of Section 303(q) of the Act and Section 17.47(a) and 17.51(a) of the Rules. We also remind KJV of its obligation to continue to comply with the prescribed painting and lighting for the Antenna Structure for as long as it owns the Antenna Structure or until the structure is dismantled.¹⁷ Future violations of the Commission's rules may result in substantial monetary penalties, regardless of KJV's financial condition.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Commission's rules, that the proposed forfeiture in the amount of fifteen thousand dollars (\$15,000) issued to KAGM-FM Joint Venture **WILL NOT BE IMPOSED** due to demonstrated inability to pay, and that the finding of willful and repeated violations of Section 303(q) of the Act, and Sections 17.47(a) and 17.51(a) of the Rules **IS AFFIRMED**.¹⁸

10. **IT IS FURTHER ORDERED** that KAGM-FM Joint Venture **IS ADMONISHED** for willful and repeated violations of Section 303(q) of the Act, and Sections 17.47(a) and 17.51(a) of the Rules.¹⁹

11. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to KAGM-FM Joint Venture, 1644 Omni Blvd., Mount Pleasant, SC 29466.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

¹⁶ See *A-O Broadcasting Corporation*, Order, 23 FCC Rcd 11296 (Enf. Bur. 2008) (cancellation of a proposed forfeiture is appropriate where entity has no apparent income, assets, or access to lines of credit).

¹⁷ See 47 U.S.C. § 303(q) (the owner of an antenna structure shall maintain the prescribed painting and/or illumination of such structure until the structure is dismantled).

¹⁸ 47 U.S.C. §§ 303(q), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 17.47(a), 17.51(a).

¹⁹ 47 U.S.C. § 303(q); 47 C.F.R. §§ 17.47(a), 17.51(a).