

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

In the Matter of	)	
	)	
J.M.J. Radio, Inc.	)	File No: EB-09-PA-0287
	)	NAL/Acct. No.: 201132400002
Licensee of AM Station WQOR	)	FRN: 0017570847
	)	Facility ID: 8092

**FORFEITURE ORDER**

**Adopted:** October 28, 2013

**Released:** October 28, 2013

By the Regional Director, Northeast Region, 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 J.M.J. Radio, Inc. (JMJ), the licensee of AM Station WQOR (Station) in Olyphant, Pennsylvania, for willfully and repeatedly violating Section 73.1125(a) of the Commission's rules (Rules).<sup>1</sup> The noted violation involved JMJ's failure to maintain a management and staff presence at the Station's main studio.

**II. BACKGROUND**

2. On November 25, 2009, an agent from the Enforcement Bureau's Philadelphia Office (Philadelphia Office) conducted an inspection of Station WQOR's main studio, which was located inside a church building at St. Joseph Oblate Seminary (Seminary), 1880 Highway 315, Pittston, Pennsylvania. A church employee escorted the agent to the Station's main studio on the second floor of the church building. The agent found that the main studio was locked. When the church employee opened the door for the agent, the agent found no station personnel present. The church employee reported that no one associated with the Station works at the main studio location and the room is always locked.

3. After speaking to the church employee, the agent contacted the station engineer by telephone and requested his assistance with the inspection. The station engineer arrived at the main studio within thirty minutes and the agent conducted the inspection. In response to questions about staffing at the main studio, the station engineer reported that the room was always locked and that there were no designated full-time or part-time personnel at the main studio. The station engineer also reported that he usually came to the main studio once a week to review Emergency Alert System (EAS) log printouts and perform any necessary maintenance. The agent advised the station engineer that the Station must maintain a meaningful management and staff presence at its main studio during normal business hours.

4. On December 17, 2009, another FCC agent attempted to conduct a follow-up inspection at the Station's main studio. The agent observed that there were no employees at the main studio to facilitate an FCC inspection or to provide public access. The agent then contacted the licensee and spoke

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<sup>1</sup> 47 C.F.R. § 73.1125(a).

with an individual identified in the Station records as a Director and Officer of JMJ (Director). She acknowledged that the main studio does not have any designated personnel. The agent advised the JMJ Director that the Station must maintain a meaningful management and staff presence at its main studio during normal business hours. The JMJ Director stated that she was not aware of the main studio requirement and would thereafter staff the Station's main studio as required.

5. On December 1, 2010, the Philadelphia Office issued a Notice of Apparent Liability for Forfeiture (*NAL*) to JMJ for failure to have adequate staffing at the Station's main studio, in violation of Section 73.1125 of the Rules.<sup>2</sup> The *NAL* proposed a \$10,000 forfeiture against the licensee. JMJ submitted a response to the *NAL* certifying that it had corrected all of the violations set forth in the *NAL* and requesting cancellation or reduction of the proposed forfeiture because (1) the Commission does not have the authority to assess a forfeiture for the Station's alleged failure to comply with requirements that have not been adopted pursuant to a rulemaking proceeding, (2) the Station did in fact maintain a meaningful management and staff presence at the main studio, albeit not with paid staff, (3) the Station has a history of compliance with the Rules, and (4) the Station's precarious financial situation renders it unable to pay the proposed forfeiture.<sup>3</sup>

### III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and the *Forfeiture Policy Statement*.<sup>6</sup> In examining JMJ's 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.<sup>7</sup> As discussed below, we have considered JMJ's response in light of these statutory factors and find that a reduction in the forfeiture is warranted based on JMJ's inability to pay.

#### A. Authority to Enforce Main Studio Staffing Requirements

7. We disagree with JMJ's claim that the Commission does not have the authority to enforce the main studio staffing requirements because such requirements are not specifically set forth in Section 73.1125 of the Rules.<sup>8</sup> In a 1988 rulemaking proceeding addressing the role of a station's main studio in light of the elimination of the program origination rule, the Commission clarified that, among other things, the main studio must continue to "maintain a meaningful management and staff presence."<sup>9</sup> In subsequent decisions, the Commission has provided further guidance by defining "meaningful presence"

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<sup>2</sup> *J.M.J. Radio, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 25 FCC Rcd 16882 (Enf. Bur. 2010) (*NAL*).

<sup>3</sup> See Opposition to Notice of Apparent Liability for Forfeiture, dated January 2011 ("*NAL Response*").

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</sup> *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*).

<sup>7</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>8</sup> *NAL Response* at 1-2.

<sup>9</sup> *Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Memorandum Opinion and Order, 3 FCC Rcd 5024, 5027, para. 24 (1988), *erratum issued*, 3 FCC Rcd 5717 (1988) (correcting language in n.29).

as full-time managerial and full-time staff personnel.<sup>10</sup> The Commission also has stated that, although management personnel need not be “chained to their desks” during normal business hours, they must “report to work at the main studio on a daily basis, spend a substantial amount of time there and . . . use the studio as a ‘home base.’”<sup>11</sup> In providing such guidance, the Commission exercised its authority to interpret its rules without being subject to the rulemaking requirements under the Administrative Procedure Act (APA).<sup>12</sup> We therefore reject JMJ’s argument that the Bureau does not have the authority to enforce the main studio requirements.

## B. Staffing at JMJ’s Main Studio

8. JMJ maintains that, notwithstanding what the agent encountered on November 25, 2009, and December 17, 2009, the Station was in compliance with the main studio staffing requirements at the time of those inspections. JMJ claims that the individuals with whom the agent spoke “were unable to accurately explain precisely how they were in compliance with the staffing component of the Main Studio Rule.”<sup>13</sup> JMJ explains that the “responses that FCC inspectors received from JMJ staff can be attributed to the staff’s erroneous belief that the FCC was asking about paid employees of the Station.”<sup>14</sup> We find that, even if the individuals with whom the agent spoke believed that the agent was asking about paid staff, the fact remains that, on two days – November 25, 2009 and December 17, 2009 – the agent found no personnel at the Station’s main studio. That is the primary basis for our conclusion that JMJ violated the main studio staffing requirements.<sup>15</sup> We therefore find that JMJ willfully and repeatedly violated Section 73.1125(a) of the Rules.<sup>16</sup>

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<sup>10</sup> See, e.g., *Jones Eastern of the Outer Banks, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 3615, 3616, para. 9 & n.2 (1991) (noting that, “This is not to say that the same staff person and manager must be assigned full-time to the main studio. Rather, there must be management and staff presence on a full-time basis during normal business hours to be considered ‘meaningful.’”), *clarified by*, 7 FCC Rcd 6800 (1992) (“*Jones Eastern II*”). See also *Birach Broadcasting Corp.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 2635 (Enf. Bur. 2010).

<sup>11</sup> *Jones Eastern II*, 7 FCC Rcd at 6802.

<sup>12</sup> See Administrative Procedure Act, 5 U.S.C. § 551 *et seq.* See also, e.g., *SBC, Inc. v. FCC*, 414 F.3d 486, 497-502 (3d Cir. 2005) (FCC order interpreting existing rules regarding termination compensation for competitive carriers was an interpretive rule exempt from the APA’s notice and comment procedures).

<sup>13</sup> *NAL Response* at 4.

<sup>14</sup> *Id.* JMJ reports that the Station “survives . . . via the active involvement of its officers and other volunteers, as well as by the efforts of volunteer staff who work simultaneously for St. Joseph Oblate Seminary . . . and for JMJ . . .” *Id.* To the extent JMJ asks for a declaratory ruling that station personnel need not be paid to qualify as employees for purposes of the main studio rule, we note that there is no requirement that either station staff or management personnel be paid employees in order for such employees to meet the main studio staffing requirements.

<sup>15</sup> We note that, except for Station Engineer Robert Reite, who came to the Station on November 25, 2009, after being contacted by the agent, none of the individuals identified by JMJ in its *NAL Response* as station “employees” was present when the agent arrived at the main studio on November 25, 2009 or December 17, 2009. See *id.* at 5-6. We also note that the one individual at the Seminary with whom the agent spoke on November 25, 2009, who conceivably could have been working simultaneously for the Station and the Seminary, clearly stated to the agent that he was not associated with the Station and that no one associated with the Station worked on a regular basis at the main studio. This individual’s account was also supported by statements from the Station’s engineer and by one of JMJ’s Directors, both of whom admitted to the agent that the Station does not have any designated staff. We find it unlikely that all three of these individuals would have misinterpreted the agent’s questions and neglected to explain that the Station was run by full-time staff and management who either worked simultaneously for the Station and the Seminary and/or worked at the Station on an unpaid basis.

<sup>16</sup> JMJ erroneously believes that the upward adjustment in the proposed forfeiture amount was based, in part, on the fact that the Station had moved its public inspection file from “its initial location at the front desk to a more remote location elsewhere in the same building,” something it claims it did at the recommendation of the FCC agent. *NAL Response* at 7. As reflected in the *NAL*, the sole basis for the upward adjustment was JMJ’s failure to have adequate

### C. Inability to Pay

9. JMJ asserts that its inability to pay the forfeiture warrants a reduction in the proposed forfeiture.<sup>17</sup> We agree. With regard to an individual's or entity's inability to pay a claim, the Commission has determined that gross revenues are generally the best indicator of an ability to pay a forfeiture.<sup>18</sup> We have reviewed the documents that JMJ submitted in support of its inability to pay claim and find a sufficient basis for reducing the forfeiture to \$1,500. However, we caution JMJ that a party's inability to pay is only one factor in our forfeiture calculation analysis, and is not dispositive.<sup>19</sup> We have previously rejected inability to pay claims in cases of repeated or otherwise egregious violations.<sup>20</sup> Therefore, future violations of this kind may result in significantly higher forfeitures that may not be reduced due to JMJ's financial circumstances.

### III. ORDERING CLAUSES

10. 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, J.M.J. Radio, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one thousand five hundred dollars (\$1,500) for violations of Section 73.1125(a) of the Commission's rules.<sup>21</sup>

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's rules within thirty (30) calendar days after the release date of this Forfeiture Order.<sup>22</sup> If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.<sup>23</sup> J.M.J. Radio, Inc. shall send electronic notification of payment to NER-Response@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed

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staffing at the Station's main studio on December 17, 2009, after it had been advised to do so by the agent at the November 25, 2009, inspection. *See NAL*, 25 FCC Rcd at 16884, para. 8.

<sup>17</sup> *NAL Response* at 3. JMJ also argues that its history of compliance warrants a reduction in the forfeiture. *Id.* Given that we are already substantially reducing the forfeiture based on JMJ's inability to pay, we need not reach this claim.

<sup>18</sup> *See PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Hoosier Broadcasting Corp.*, Memorandum Opinion and Order, 15 FCC Rcd 8640 (2000) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues).

<sup>19</sup> *See* 47 U.S.C. § 503(b)(2)(E) (requiring Commission to 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 such other matters as justice may require).

<sup>20</sup> *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840 (Enf. Bur., Western Region 2011) (holding that violator's repeated acts of malicious and intentional interference outweigh evidence concerning his ability to pay) (petition for reconsideration pending); *Hodson Broadcasting Corp.*, Forfeiture Order, 24 FCC Rcd 13699 (Enf. Bur. 2009) (holding that permittee's continued operation at variance with its construction permit constituted an intentional and continuous violation, which outweighed permittee's evidence concerning its ability to pay the proposed forfeitures). *See Michael W. Perry*, Forfeiture Order, 27 FCC Rcd 2281 (2012) (reducing forfeiture based on inability to pay, but warning that future violations of the same kind may not be reduced due to financial circumstances).

<sup>21</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 73.1125(a).

<sup>22</sup> 47 C.F.R. § 1.80.

<sup>23</sup> 47 U.S.C. § 504(a).

FCC Form 159 (Remittance Advice) must be submitted.<sup>24</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

12. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>25</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

13. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to J.M.J. Radio, Inc. at 1880 Highway 315, Pittston, Pennsylvania 18640 and to its attorney, Stuart W. Nolan, Jr. at Legal Works Apostolate, PLLC, 4 Family Life Lane, Front Royal, Virginia 22630.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt  
Regional Director  
Northeast Region  
Enforcement Bureau

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<sup>24</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>25</sup> See 47 C.F.R. § 1.1914.