

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

In the Matter of)	
)	
AK MEDIA GROUP, INC.)	File No. EB-00-IH-0010
)	NAL/Acct. No. X32080011
Licensee of Station KJR-FM)	
Seattle, Washington)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 17, 2000

Released: April 19, 2000

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find AK Media Group, Inc. (“AK”), licensee of Station KJR-FM, Seattle, Washington, apparently liable for a forfeiture in the amount of two thousand dollars (\$2,000) for a violation of Section 73.1216 of the Commission’s rules, which requires licensees, among other things, to broadcast the material terms of a contest. We find that AK conducted a contest, “\$10,000 Music Challenge,” without broadcasting the material terms of the contest.

II. BACKGROUND

2. On November 7, 1999, Ms. Debra Barto sent a complaint to the Commission against KJR-FM. According to Ms. Barto, Station KJR-FM conducted a contest under which a contestant could win \$10,000 by being the ninth caller and identifying the title and artist of ten songs from which the station played very brief excerpts. On November 4, 1999, at 12:30 p.m., Ms. Barto was the ninth caller, and she correctly identified the ten songs from which excerpts were played. According to her complaint, Ms. Barto was then told that day by Laura in the station’s Promotions Department, and by Gary Bryan, the station’s Program Director, that she would not be awarded the \$10,000 because she had played the Fall 1999 contest previously within the last ten days. Ms. Barto admitted that she had played the contest on October 26, 1999 and won \$95 (which was the prize for being the ninth caller). Ms. Barto claims that she had been told in April 1999 by Laura of the station’s Promotions Department that if only the last song remained to be guessed, she could play for the \$10,000 prize even if she had played within the last seven days,¹ although she would not win \$95 just for being the correct caller.

3. On December 29, 1999, the Commission staff sent AK a letter of inquiry. In its response, which was filed on March 2, 2000, AK explains that it ran the “\$10,000 Music Challenge” in the spring of 1999 and again in the fall of 1999. Three times each day, the station would play a ten-song montage consisting of very brief excerpts of songs. The ninth caller would then have the opportunity to name all ten

¹ The rules for the Spring 1999 contest provided that a contestant “may only win the \$95 cash prize once per five business days.”

songs by title and artist. If the contestant named all ten songs correctly, the contestant would win \$10,000. Otherwise, they won \$95 for being the ninth caller.

4. AK confirmed that Ms. Barto was announced as the winner of the "\$10,000 Music Challenge" on November 4, 1999, and that she was later disqualified for having played the contest within the previous ten business days. The written rules for the Fall 1999 version of the contest state:

YOU MAY ONLY PARTICIPATE IN THE CONTEST ONCE EVERY TEN BUSINESS DAYS. IF YOU GET THROUGH AND WIN \$95, YOU ARE NOT ELIGIBLE TO PLAY AGAIN FOR TEN BUSINESS DAYS.

(Emphasis in original). When asked to provide a tape or transcript of "any over-the-air announcements describing the material terms of the contest," AK claimed that it ran live liners referring listeners to its web site for complete contest rules. AK states that all contest rules were posted at the station's reception desk, in the studio, and on its web site. AK admits that Ms. Barto and Laura Rieder of the station's Promotions Department had a conversation in April 1999 concerning the rules for the Spring 1999 contest, but AK denies that Ms. Barto was told anything that would apply to the Fall 1999 contest.

5. AK claims that before each contestant played the Fall 1999 contest, they were asked three eligibility questions: "1) Are you a Washington State resident? 2) Are you 18 years or older? [and] 3) Have you played this contest within the last ten business days?" AK claims that Ms. Barto was asked those eligibility questions before she played, and she denied that she had played in the last ten days. AK did not support its claim with an affidavit or declaration from Heidi May, the disc jockey who spoke with Ms. Barto. Ms. Barto claims that she was not asked those questions until after she won the contest. In her comments on the station's response to the letter of inquiry, Ms. Barto submits a tape of her on-the-air conversation with Ms. May during which no eligibility questions were asked. The parties agree that Ms. Barto and Ms. May discussed Ms. Barto's eligibility after Ms. Barto played the contest.

III. DISCUSSION

6. Section 73.1216 of the Commission's rules provides:

A licensee that broadcasts or advertises information about a contest it conducts shall fully and accurately disclose the material terms of the contest, and shall conduct the contest substantially as announced or advertised. No contest description shall be false, misleading or deceptive with respect to any material term.

Note 2 to the rule states:

In general, the time and manner of disclosure of the material terms of a contest are within the licensee's discretion. However, the obligation to disclose the material terms arises at the time the audience is first told how to enter or participate and continues thereafter. The material terms should be disclosed periodically by announcements broadcast on the station conducting the contest, but need not be enumerated each time an announcement promoting the contest is broadcast. Disclosure of material terms in a reasonable number of announcements is sufficient. In addition to the required broadcast announcements, disclosure of the material terms may be made in a non-broadcast manner.

7. It appears that AK violated Section 73.1216 of the Commission's rules by not broadcasting

material terms of the “\$10,000 Music Challenge,” including, but not limited to, the restriction that contestants could only play once every ten business days. AK’s disclosure of the contest rules at the station and on its web site does not comply with the rule. The Commission’s rules clearly state that “[t]he material terms should be disclosed periodically *by announcements broadcast on the station* conducting the contest.” 47 C.F.R. § 73.1216 n.2 (emphasis added). The rules state that while disclosure by non-broadcast means (such as making rules available at the stations and on the World Wide Web) can be considered in determining whether adequate disclosure has been made, the non-broadcast disclosures must be “[i]n addition to the required broadcast announcements” *Id.* Thus, while non-broadcast disclosures can supplement broadcast announcements, they cannot act as a substitute for broadcast announcements. The dispute between Ms. Barto and AK concerning their different understandings of the rules for the “\$10,000 Music Challenge” demonstrates why it is important for stations to broadcast all of the material terms of a contest.

8. Section 503(b) of the Communications Act, 47 U.S.C. § 503(b) and Section 1.80(a) of the Commission’s rules, 47 C.F.R. § 1.80(a), each state that any person who willfully or repeatedly fails to comply with the provisions of the Communications Act or the Commission’s rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Communications Act, the term “willful” means that the violator knew it was taking the action in question, irrespective of any intent to violate the Commission’s rules. *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4387-4388 (1991). Furthermore, a continuing violation is “repeated” if it lasts more than one day. *Id.*, 6 FCC Rcd at 4388.

9. Based on the evidence before us, we find that AK conducted the “\$10,000 Music Challenge” contest without broadcasting the material terms of the contest, in apparent willful and repeated violation of Section 73.1216 of the Commission’s rules. The Commission’s Forfeiture Policy Statement sets a base forfeiture amount of \$4,000 for a violation of Section 73.1216 of the rules.² In this case, we note that while AK did not comply with the rule, it made some efforts to make the rules available to the public. We believe these efforts mitigate the violation. Based upon our review of all the pertinent factors as required by Section 503(b)(2)(D) of the Act, we believe a \$2,000 forfeiture is appropriate.

IV. ORDERING CLAUSES

10. ACCORDINGLY, IT IS ORDERED pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission’s rules,³ AK Media Group, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of two thousand dollars (\$2,000) for willfully and repeatedly violating Section 73.1216 of the Commission’s rules.

11. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission’s rules, that within thirty days of the release of this Notice, AK SHALL PAY to the United States 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 credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the

² *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission’s Rules*, 12 FCC Rcd 17087, 17114 (1997), *recon. denied* 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b).

³ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

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. referenced above.

13. The response, if any, must be mailed to Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W, Room 3-B443, Washington DC 20554 and MUST INCLUDE the file number listed above.

14. IT IS FURTHER ORDERED that a copy of this Notice shall be sent, by Certified Mail/Return Receipt Requested, to AK's counsel, James L. Winston, Esq., Rubin, Winston, Diercks, Harris & Cooke, L.L.P., 1155 Connecticut Avenue, N.W., 6th Floor, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau