

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

In the Matter of)	
)	
KYOO COMMUNICATIONS)	EB-00-KC-193 (AM)
)	
Station KYOO(AM))	EB-00-KC-194 (FM)
Station KYOO-FM)	
Bolivar, Missouri 65613)	NAL/Acct. No. 20013256-001

FORFEITURE ORDER

Adopted: April 27, 2001

Released: May 1, 2001

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of twelve thousand dollars (\$12,000) against KYOO Communications (“KYOO”) for willful violations of Sections 11.35(b), 17.50, 73.1350(c)(1) and 73.1800(a) of the Commission’s Rules (“Rules”).¹ The noted violations involve KYOO’s failure to maintain an operational Emergency Alert System (“EAS”) combined with its failure to log the outage of the EAS equipment, failure to clean and repaint its antenna tower as often as necessary to maintain good visibility, failure to monitor and control its transmitter, and failure to maintain station logs.

2. On January 31, 2001, the Commission’s Kansas City, Missouri, Field Office (“Kansas City Office”) issued a Notice of Apparent Liability (“NAL”) for a monetary forfeiture in the amount of twenty-two thousand dollars (\$22,000) for the noted violations.² KYOO filed its response on February 28, 2001.

II. BACKGROUND

3. KYOO is the licensee of Stations KYOO(AM) and KYOO-FM, licensed to serve Bolivar and Halfway, Missouri, respectively. KYOO owns those stations’ common antenna tower. On December 5, 2000, agents from the Kansas City Office conducted an inspection of Stations KYOO(AM) and KYOO-FM and their antenna tower. The NAL is based on the following conditions observed by the agents at the time of the inspection:

- (a) The EAS coding/decoding equipment was inoperable. There were no entries in the station logs indicating when the EAS equipment became inoperable.

¹ 47 C.F.R. §§ 11.35(b), 17.50, 73.1350(c)(1) and 73.1800(a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 20013256-001 (Enf. Bur., Released January 31, 2001).

(b) The antenna structure did not provide good visibility to aircraft because of rust and the extremely faded condition of the paint.

(c) KYOO had not established monitoring procedures and schedules sufficient to determine compliance with the requirements of Section 73.1560 of the Rules³ regarding operating power.

(d) KYOO was not maintaining its station logs as required by Section 73.1820 of the Rules.⁴

4. In its response to the NAL, KYOO does not contest the violations alleged in the NAL but seeks mitigation of the proposed \$22,000 forfeiture on the basis of its inability to pay that amount. Specifically, KYOO argues that the proposed forfeiture should be mitigated to \$8,000 or less on the basis of the gross revenues shown in its 1997, 1998, and 1999 federal income tax returns and further mitigated on the basis that imposition of the proposed forfeiture would result in a devastating financial burden for KYOO's owner and his family.

III. DISCUSSION

5. We have examined KYOO's response to the NAL pursuant to the statutory factors, and in conjunction with the *Forfeiture Policy Statement*.⁵ As a result of our review, we conclude that KYOO has provided a sufficient justification for mitigating the proposed forfeiture amount to \$12,000 but not \$8,000. Specifically, although other factors can be considered, the best indication of a company's ability to pay a forfeiture amount is its gross revenues. *See generally, PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992). To support its claim of inability to pay, KYOO has submitted federal income tax returns for 1997 through 1999. In light of the evidence submitted, for which KYOO requested confidential treatment, we lower KYOO's proposed monetary forfeiture from \$22,000 to \$12,000.⁶

IV. ORDERING CLAUSES

6. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Act, Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,⁷ KYOO Communications, **IS LIABLE FOR A MONETARY**

³ 47 C.F.R. § 73.1560

⁴ 47 C.F.R. § 73.1820

⁵ *See The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) and Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. § 503(b)(2)(D).

⁶ *See Coleman Enterprises, Inc.*, 15 FCC Rcd 24385 (2000); and *Natchez Communications, Inc.*, 15 FCC Rcd 4628 (Enf. Bur. 2000), *recon. den.*, 15 FCC Rcd 18798 (Enf. Bur. 2000).

⁷ 47 C.F.R. §§ 0.111, 0.311 and 1.80(f)(4).

FORFEITURE in the amount of \$12,000 for the willful violation of Sections 11.35(b), 17.50, 73.1350(c)(1) and 73.1800(a) of the Rules.

7. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) days of the release of this Order. If the forfeiture is not paid within the specified period, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.⁸ Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 915OR0003. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.

8. **IT IS FURTHER ORDERED** that copies of this Order shall be sent by certified mail, return receipt requested, to KYOO Communications, 2306 W. Auburn, Bolivar, Missouri 65613, and to its attorneys James P. Riley, Esq., and Liliana E. Ward, Esq., Fletcher, Heald & Hildreth, P.L.C., 1300 N. 17th Street, Eleventh Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

⁸ 47 U.S.C. § 504(a).