

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

In the Matter of)	
)	
Radio One Licenses, Inc.)	File No. EB-00-BS-106
)	
Licensee of Station WBOT(FM))	NAL/Acct. No. 200132260001
)	
Brockton, Massachusetts)	

FORFEITURE ORDER

Adopted: August 10, 2001

Released: August 14, 2001

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of twenty-one thousand five hundred dollars (\$21,500) against Radio One Licenses, Inc. ("Radio One"), licensee of WBOT(AM), for willful violation of the following Sections of the Commission's Rules ("Rules"): 11.35(a) (failure to have operational Emergency Alert System ("EAS") equipment); 73.1125(e)¹ (failure to establish a local or toll-free telephone number in the community of license); 73.1350(c)(1) (failure to establish monitoring procedures to determine compliance with Section 73.1560 regarding operating power); 73.1800(a) (failure to maintain a station log); and 73.3526(a)(2) (failure to maintain a public inspection file)².

II. BACKGROUND

2. On March 14, 2000, the Commission's Boston Field Office ("Boston Office") conducted an inspection of radio station WBOT(AM) in Boston, Massachusetts, after it received information indicating that WBOT may have been in violation of the main studio rule. The inspection revealed ten different rule violations. On March 28, 2000, the District Director of the Boston Office issued a Notice of Violation ("NOV") for the violations. On March 8, 2001, the District Director of the Boston Office issued a Notice of Apparent Liability ("NAL") to Radio One in the amount of \$22,000. After being granted an extension of time to respond to the NAL, Radio One submitted its response to the Commission on May 1, 2001. In its response, Radio One acknowledges, with explanation, that all of the violations

¹ Effective May 20, 2000, Section 73.1125 of the Rules was amended and the subsections were, consequently, reordered. At the time the Notice of Violation ("NOV") was issued, the Rule and subsection that was violated was 73.1125(d). With the amendment to and restructuring of Section 73.1125, the subsection that was violated is now 73.1125(e). For clarity, we will refer to this violation as a violation of Section 73.1125(e) of the Rules throughout this document.

² 47 C.F.R. §§ 11.35(a), 73.1125(e), 73.1350(c)(1), 73.1800(a), 73.1560, 73.3526(a)(2).

occurred except the public file violation, which it disputes. Radio One requests that all of the forfeiture amounts be cancelled and/or reduced.

III. DISCUSSION

The Section 11.35(a) Violation

3. The District Director of the Boston Office assessed the base forfeiture amount of \$8,000 against Radio One for its failure to have operational EAS equipment on the date of the inspection. Radio One states that it became the licensee of WBOT on October 1, 1999 and immediately notified the Commission that the station would go silent to enable Radio One to implement programming, format, and personnel changes. Radio One acknowledges that it did not have operational EAS equipment from December 1, 1999, the date it returned WBOT to the air, to March 20, 2000. However, Radio One asserts that it became aware of the fact that WBOT had no EAS equipment in December of 1999, placed an order for the station's new EAS equipment in January of 2000, and that WBOT had received but not installed the equipment one week before the inspection. Radio One contends that there were several reasons that WBOT did not have operational EAS equipment on the day of the inspection. Radio One claims that, unbeknownst to it, no EAS equipment was associated with WBOT when the station was purchased. Radio One explains that delays in the shipping and receipt of the replacement equipment and difficulty in hiring qualified personnel to install the equipment, as well as the departure of its Director of Engineering, added further delay in getting the EAS system operating and were factors beyond Radio One's control.

4. Although Radio One asserts that it did not become aware of the fact that WBOT lacked EAS equipment until December of 1999, the Rules only provide temporary authority to operate for 60 days pending repair or replacement of EAS equipment.³ Therefore, prior to the date of the inspection, Radio One was required to have WBOT's EAS system operational or to make an informal request to the District Director of the Boston Office for additional time to replace the EAS system. Radio One acknowledges that it did neither. Instead, WBOT simply operated in violation of the rule.⁴

5. Radio One seeks an admonishment instead of a forfeiture for its violation of Section 11.35(a) and cites to a letter of admonishment issued by the Mass Media Bureau to Ms. Linda Reed, President of KHYM, Inc., dated April 22, 1998 ("KHYM, Inc."), as precedent. This argument lacks merit. The case Radio One cites involved violations of different rules. In the KHYM, Inc. case, the Mass Media Bureau admonished the licensee for violating Section 73.1740(a)(4)⁵ of the Rules by not adhering to a minimum operating schedule and failing to notify the Commission within 10 days of the limited or discontinued operation; and violation of Section 73.1560(d)⁶ of the Rules by operating at reduced power for more than 10 days without notifying the Commission of that fact. This case, by contrast, involves failure to install EAS equipment.

³ See 47 C.F.R. 11.35(c).

⁴ See *Arnold Broadcasting Company, Inc.*, FCC 01-197, released July 5, 2001 (Commission upheld imposition of an \$8,000 forfeiture for a one-month long violation of Section 11.35(a) of the Rules).

⁵ 47 C.F.R. 73.1740(a)(4).

⁶ 47 C.F.R. 73.1560(d).

6. Alternatively, Radio One seeks a reduction of the forfeiture amount. In support of its request for reduction, Radio One cites to *In re Catherine L. Waddill and G.M.D. Partnership*, 13 FCC Rcd 23861 (1998). In the *Waddill* case, the Commission gave four specific reasons for reducing a \$250,000 forfeiture, that had been issued to G.M.D. Partnership and G.M.D. Partnership II (collectively "GMD"), to \$8,000. First, the Commission found no attempt to mislead the Commission or conceal material information. Second, the record did not support a finding that GMD acted in bad faith. Third, GMD attempted to remedy the violation with which it was charged. Finally, and most significantly, the Commission's current forfeiture policy statement⁷ reflected an \$8,000 penalty for alien ownership violations, not the \$250,000 forfeiture amount that had been assessed. Thus, the reduction in *Waddill* merely brought the forfeiture ultimately imposed by the Commission in line with the base forfeiture amount indicated by the *Forfeiture Policy Statement* for the violation. In the instant case, the forfeiture imposed is already consistent with the Forfeiture Policy Statement. Accordingly, we disagree that this case supports reduction of the forfeiture for this violation. Moreover, we note that the Commission recently upheld an \$8,000 forfeiture for a station's failure to have EAS equipment for one month, rather than the four months here.⁸

7. Radio One's claims that it was plagued by delays in shipping and receipt of replacement equipment also do not warrant reduction or cancellation of the forfeiture. According to an invoice submitted by Radio One, Radio One ordered the required equipment on January 14, 2000 and it was shipped via overnight carrier on that date. Radio One should have received the equipment on January 15, 2000, two months before the inspection. Although the equipment was shipped to Atlanta, it was clearly in Radio One's possession. Accordingly, any delays in shipping the equipment to WBOT do not appear to be circumstances beyond Radio One's control. Similarly, we do not find Radio One's difficulty in hiring staff to install the equipment or the departure of its Director of Engineering to be circumstances warranting reduction or cancellation of the forfeiture. Radio One has not indicated what, if any, other avenues it pursued to get its EAS equipment installed during the approximate two-month period that it had the equipment on hand.

The Section 73.1125(e) Violation

8. Section 73.1125(e) of the Rules requires AM broadcast stations to maintain a local telephone number in its community of license or a toll-free number. Radio One relocated WBOT's main studio from Brockton, Massachusetts, its community of license, to Boston, Massachusetts, on May 15, 2000. For four months following the relocation of the main studio, listeners in WBOT's community of license could not reach WBOT without making a long distance telephone call. Radio One explains that it was unaware that Brockton listeners calling the new main studio in Boston would have to make a toll call. Further, Radio One asserts that WBOT always had a local number in Brockton that would enable callers to get information concerning the station and that it knows of no harm or inconvenience to the public that resulted from the temporary lapse. Although Radio One may have had such an arrangement, the fact

⁷ *The Commission's Forfeiture Policy Statement and Amendment to Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 13 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

⁸ See *Arnold Broadcasting*, note 4 *supra*.

remains that Brockton listeners calling WBOT had to incur long-distance charges to do so for a four-month period. This is a violation of Section 73.1125(e) of the Rules and we impose a \$1,000 forfeiture for the violation.⁹ However, we note that Radio One voluntarily disclosed that it did not have a local or toll free telephone line by which residents of Brockton could reach WBOT once it relocated to Boston. For Radio One's voluntary disclosure of this violation, we believe a reduction of \$500 is appropriate.

The Sections 73.1350(c)(1) and 73.1800(a) Violations

9. Section 73.1350(c)(1) of the Rules provides that monitoring procedures and schedules must be established to enable the licensee to determine compliance with Section 73.1560 regarding operating power, and other operating parameters. Section 73.1800(a) requires licensees to maintain a station log as required by Section 73.1820¹⁰ of the Rules. Radio One acknowledges that on the day of the inspection it did not have monitoring procedures and schedules established, nor did it have a station log. Although Radio One asserts that these violations occurred because of miscommunications among personnel as to clearly defined job responsibilities and an unanticipated change in station personnel, there is no dispute that the violations occurred. Thus, we impose a \$2,000 forfeiture for the Section 73.1350(c)(1) violation (the base amount for this violation in the *Forfeiture Policy Statement*) and a \$1,000 forfeiture for the Section 73.1800(a) violation.¹¹

The Section 73.3526(a)(2) Violation

10. Section 73.3526(a)(2) requires broadcast licensees to maintain a public inspection file. The District Director of the Boston Office assessed a \$10,000 forfeiture, which is the base amount for this violation, against Radio One for not having a public inspection file. Radio One contends that it has always maintained a public inspection file at its main studio and, thus, was in compliance with the Rule at the time of the inspection. Radio One proffers that, possibly, the FCC agent asked the station manager, Mr. Tom Calococci, to see the public inspection file while they were inspecting the transmitter site, not at the main studio, and the station manager mistakenly told the agent that a public file had not yet been established. Radio One asserts that had the agent asked for the public inspection file at the main studio, he would have been provided access to it.

11. The investigating agent's notes from the inspection establish that he inquired about the public file at the main studio. The file was never made available to him. His notes also reflect that later, at the transmitter site, he asked Mr. Calicocci if the station had a public inspection file, to which Mr. Calicocci responded, "not yet." Thus, we do not find Radio One's speculation about what might have happened to be persuasive. Reasonable access to the public inspection file serves the important purpose of facilitating citizen monitoring of a station's operating performance and fostering community involvement with local stations. This in turn helps ensure that stations are responsive to the needs and

⁹ See *M.C. Allen Productions*, 16 FCC Rcd 9505 (Enf. Bur. 2001) (forfeiture imposed for violation of Section 73.1125(e) of the Rules).

¹⁰ 47 C.F.R. § 73.1820.

¹¹ See *KYOO Communications*, 16 FCC Rcd 9291 (Enf. Bur. 2001) (\$1,000 forfeiture imposed for violation of Section 73.1800(a) of the Rules).

interests of their local communities.¹² In order for the rule to serve its intended purpose, the public inspection file has to be made available upon request during normal business hours. Radio One violated Section 73.3526(a)(2) of the Rules when it did not provide the public inspection file to the investigating agent upon his request. We impose a \$10,000 forfeiture for this violation.

12. With regard to all of the violations, Radio One asserts that a reduction is warranted because it took expedient steps to remedy the violations. Radio One's remedial actions to correct the violations, while commendable, are not a mitigating factor.¹³ Radio One further contends that, despite its purchase of over thirty radio stations nationwide over the last two years, none of its stations has been found in violation of any of the Commission's Rules. To the contrary, we note that the NOV issued in the instant case is not the first issued to Radio One. The District Director of the Boston Office issued an NOV to Radio One on November 18, 1999 for violations at WBOT that are separate and distinct from the violations in this case. Consequently, Radio One does not have an overall history of compliance with the Commission's Rules, and a reduction of the forfeiture on this basis is not warranted.

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁴ Radio One Licenses, Inc. IS LIABLE FOR A MONETARY FORFEITURE in the amount of twenty-one thousand five hundred dollars (\$21,500) for violating Sections 11.35(a), 73.1125(e), 73.1350(c)(1), 73.1800(a), and 73.3526(a)(2) of the Commission's Rules.

14. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules,¹⁵ within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁶ 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 NAL/Acct. No. 200132260001. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁷

¹² *In the Matter of Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television & Radio Stations*, 13 FCC Rcd 15691, 15700 (1998).

¹³ *E.g., Puerto Rico Tower Co., Inc.*, 16 FCC Rcd 271, 273 (Enf. Bur. 2001); *Crown Communication, Inc.*, 15 FCC Rcd 21937, 21939 (Enf. Bur. 2000) (both citing *Station KGVN, Inc.*, 42 FCC 2d 258, 259 (1973)).

¹⁴ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁵ 47 C.F.R. § 1.80.

¹⁶ 47 U.S.C. § 504(a).

¹⁷ *See* 47 C.F.R. § 1.1914.

15. **IT IS FURTHER ORDERED** that, a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested to counsel for Radio One Licenses, Inc., Davis Wright Tremaine, Attention: Pamela C. Cooper, Esq., 1500 K Street, NW, Washington, DC 20005.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau