

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

In the Matter of	)	
	)	
Hancock Broadcasting Corporation	)	File No. EB-01-OR-012
WBSL(AM)	)	NAL/Acct. No. 200132620003
Bay St. Louis, Mississippi	)	

**FORFEITURE ORDER**

**Adopted: August 13, 2001**

**Released: August 15, 2001**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of three thousand dollars (\$3,000) to Hancock Broadcasting Corporation (“Hancock”), licensee of Station WBSL(AM), Bay St. Louis, Mississippi, for willful violations of Sections 11.35(a) and 73.49 of the Commission’s Rules (“Rules”).<sup>1</sup> The noted violations involve Hancock’s failure to install and maintain operational Emergency Alert System (“EAS”) equipment at WBSL(AM) and its failure to enclose WBSL(AM)’s antenna tower within an effective locked fence or other enclosure.

2. On April 4, 2001, the Commission’s New Orleans, Louisiana, Field Office (“New Orleans Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Hancock for a forfeiture in the amount of fifteen thousand dollars (\$15,000).<sup>2</sup> Hancock filed a response to the *NAL* on May 7, 2001.

**II. BACKGROUND**

3. On January 24, 2001, an agent from the New Orleans Office inspected WBSL(AM). During the inspection, the agent observed that the station’s EAS equipment was not connected to a power source and was not programmed to monitor and receive EAS tests or messages. In addition, the agent observed that, although there was a lock on the gate to the fence surrounding WBSL(AM)’s antenna tower, the gate was unlocked and open. The agent further observed that the station was not maintaining logs of EAS tests and activations, there was no EAS Operating Handbook at the station, and the station did not have a chief operator designated in writing and posted with the station authorization.

4. On January 29, 2001, the New Orleans Office issued a Notice of Violation (“NOV”) citing Hancock for violations of Sections 11.35(a) (failure to install EAS equipment so that monitoring and transmitting functions are available), 73.49 (failure to enclose the AM antenna tower within an

<sup>1</sup> 47 C.F.R. §§ 11.35(a) and 73.49.

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200132620003 (Enf. Bur., New Orleans Office, released April 4, 2001).

effective locked fence or other enclosure), 73.1820(a)(1)(iii) (failure to maintain logs of EAS tests), 11.15 (failure to maintain a copy of the EAS Operating Handbook at normal duty positions or EAS equipment locations), and 73.1870(a) (failure to designate a chief operator in writing with a copy posted with the station authorization). On February 20, 2001, Hancock submitted a response to the NOV in which it indicated that the violations had been corrected.

5. On April 4, 2001, the New Orleans Office issued the subject *NAL* to Hancock for failure to install EAS equipment so that monitoring and transmitting functions are available in willful violation of Section 11.35(a) of the Rules and failure to enclose the AM antenna tower within an effective locked fence or other enclosure in willful violation of Section 73.49 of the Rules, each of which is a safety-related violation. The other violations cited in the NOV were not included in the *NAL*. On May 7, 2001, the Commission received Hancock's response to the *NAL*, which seeks rescission or reduction of the forfeiture. In its response, Hancock argues that the violations were not willful. Hancock concedes that at the time of the inspection, the EAS equipment was not functioning. However, Hancock states that the EAS equipment was installed and in place, but during the installation of the new transmitter and other broadcast equipment, the EAS equipment was not hooked up properly. Hancock further states that purchasing the EAS equipment and having it in place shows that the violation was not willful. In addition, Hancock asserts that there was in fact a lock on the gate to the fence surrounding the antenna tower, but with some force a person could move the gate and enter the site. Hancock also indicates that both violations have been corrected. Finally, Hancock seeks reduction of the forfeiture amount, arguing that payment of the forfeiture would result in a financial hardship for the station.

### III. DISCUSSION

6. The forfeiture amount in this case was assessed in accordance with Section 503 of the Communications Act of 1934, as amended ("Act"),<sup>3</sup> Section 1.80 of the Rules,<sup>4</sup> and *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) ("*Policy Statement*"). In examining Hancock's response, Section 503(b) 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>5</sup>

7. Section 11.35(a) of the Rules requires that broadcast stations install EAS encoders, EAS decoders and attention signal generating and receiving equipment so that the monitoring and transmitting functions are available during the times the stations are in operation. Section 73.49 of the Rules provides that AM antenna towers having radio frequency potential at the base must be enclosed within effective locked fences or other enclosures. Hancock concedes that it violated Sections 11.35(a) and 73.49, but argues that the violations were not willful. We disagree. Section 312(f)(1) of the Act provides that "the term 'willful,' when used with reference to the commission or omission of any act, means the conscious or deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission ...."<sup>6</sup> This definition applies to the term "willful" as

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<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> 47 C.F.R. § 1.80.

<sup>5</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>6</sup> 47 U.S.C. § 312(f)(1).

used in Section 503(b) of the Act. *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991). Hancock states that during installation of a new transmitter and other broadcast equipment, the EAS equipment “was not hooked up properly.” However, at the time of the inspection, the EAS equipment was not programmed to monitor and receive EAS tests or messages and was not even connected to a power source. Thus, it was not a matter of the EAS equipment not being hooked up properly; rather, the equipment was not hooked up at all. In addition, we reject Hancock’s assertion that purchasing the equipment and having it in place shows that the violation was not willful. Section 11.35(a) requires that the equipment be installed. With respect to the Section 73.49 violation, Hancock asserts that there was in fact a lock on the gate to the fence surrounding the antenna tower, but with some force a person could move the gate and enter the site. However, at the time of the inspection, the gate was unlocked and open and it was not necessary to use “some force” to push open the gate. Accordingly, we find that Hancock willfully violated Sections 11.35(a) and 73.49 of the Rules.<sup>7</sup> Further, we note that Hancock’s remedial actions to correct the violations, while commendable, are not a mitigating factor. *See Station KGVL, Inc.*, 42 FCC 2d 258, 259 (1973).

8. Hancock also argues that payment of the \$15,000 forfeiture would result in a financial hardship for the station and provides tax returns for 1998, 1999 and 2000 in support of this argument. Although other factors can be considered, the Commission has held that a licensee’s gross income is generally the best indicator of its ability to pay a forfeiture. *See PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992). In view of the gross revenues indicated by Hancock’s tax returns, we conclude that it is appropriate to reduce the forfeiture amount from \$15,000 to \$3,000.

9. We have examined Hancock’s response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Hancock willfully violated Sections 11.35(a) and 73.49 of the Rules, but we reduce the forfeiture amount from \$15,000 to \$3,000.

#### IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act,<sup>8</sup> and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>9</sup> Hancock Broadcasting Corporation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand dollars (\$3,000) for failure to install its EAS equipment so the monitoring and transmitting functions are available in willful violation of Section 11.35(a) of the Rules and failure to enclose its AM antenna tower within an effective locked fence in willful violation of Section 73.49 of the Rules.

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<sup>7</sup> Hancock’s assertion that the violations were not willful is also unpersuasive given that Hancock has previously been cited for essentially the same violations. On January 29, 1992, the New Orleans Office issued an NOV to Hancock for failure to enclose its AM antenna tower within an effective locked fence, failure to install its Emergency Broadcast System (“EBS”) equipment so that it was capable of functioning properly, and failure to maintain logs of EBS tests.

<sup>8</sup> 47 U.S.C. § 503(b).

<sup>9</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules<sup>10</sup> 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.<sup>11</sup> Payment shall 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. referenced above. 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.<sup>12</sup>

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to Hancock Broadcasting Corporation, WBSL(AM), 1190 Casino Magic Drive, Bay St. Louis, Mississippi 39520.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>10</sup> 47 C.F.R. § 1.80.

<sup>11</sup> 47 U.S.C. § 504(a).

<sup>12</sup> See 47 C.F.R. § 1.1914.