

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

In the Matter of)	
)	
Cornbelt Broadcasting Co.)	File No. EB-02-CG-104
Licensee of WHOW(AM) and WHOW-FM)	NAL/Acct. No. 200232320006
Clinton, Illinois)	FRN: 0003-7736-94

MEMORANDUM OPINION AND ORDER

Adopted: March 31, 2003

Released: April 2, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“Order”), we grant in part and deny in part the petition for reconsideration filed on November 27, 2002, by Cornbelt Broadcasting Co. (“Cornbelt”). Cornbelt seeks reconsideration of the *Forfeiture Order*¹ in which the Chief, Enforcement Bureau (“Bureau”), found it liable for a monetary forfeiture in the amount of \$17,000 to, for willfully and repeatedly violating Sections 11.35(a), 17.4(g), and 73.49 of the Commission’s Rules (“Rules”).² The noted violations involve Cornbelt’s failure to have an operational Emergency Alert System (“EAS”) decoder, post the antenna structure registration (“ASR”) number, and enclose its antenna structure within effective locked fences or other enclosures. For the reasons discussed below, we reduce the monetary forfeiture to \$1,000.

II. BACKGROUND

2. Cornbelt is the licensee of radio stations WHOW(AM) and WHOW-FM in Clinton, Illinois, and owns those stations’ antenna structures. On February 25, 2001, the Bureau’s Chicago, Illinois, District Office (“Chicago Office”) received a complaint alleging that WHOW(AM) and WHOW-FM were operating in violation of various Commission rules. As a result of that complaint, an agent from the Chicago Office inspected those stations on April 25, 2001. During the inspection, the agent observed that the stations’ EAS decoder was inoperative and there were no log entries indicating why the stations did not receive EAS tests. Additionally, the agent observed that the ASR number was not posted on or near the base of the antenna structure. The agent also observed that the AM station antenna structure was not enclosed by an effective, locked fence.

3. On May 7, 2001, the Chicago Office issued Official Notices of Violation (“NOV”) to Cornbelt citing violation of Sections 11.35(a), 17.4(g), and 73.49 of the Rules and other violations. Cornbelt did not respond to the NOV’s.

¹ 17 FCC Rcd 21553 (Enf. Bureau 2002).

² 47 C.F.R. §§ 11.35(a), 17.4(g), 73.49.

4. On February 27, 2002, a second agent from the Chicago Office inspected stations WHOW(AM) and WHOW-FM. The agent observed that the stations' EAS decoder was inoperative and there were no log entries indicating why the stations did not receive EAS tests; that the ASR number was not posted on or near the base of the antenna structure; and that the antenna structure was not enclosed by an effective, locked fence.

5. On June 18, 2002, the District Director of the Chicago Office issued a \$17,000 *Notice of Apparent Liability for Forfeiture* ("NAL") to Cornbelt for willful and repeated violation of Sections 11.35(a), 17.4(g), and 73.49 of the Rules.³ Cornbelt did not file a response to the NAL. On October 31, 2002, the Bureau released a *Forfeiture Order* affirming the forfeiture proposed by the NAL. On November 27, 2002, Cornbelt filed a petition for reconsideration of the *Forfeiture Order*. Cornbelt does not dispute the violations but requests cancellation of the forfeiture. Cornbelt argues that a history of overall compliance mitigates the violations and that it is unable to pay the forfeiture. To support its inability to pay claim, Cornbelt submits financial statements for 1998, 1999, 2000 and 2001. In addition, Cornbelt states that stations WHOW(AM) and WHOW-FM "have been forced off the air . . . The company . . . may not be able to secure the necessary funds to make all equipment purchases and repairs in order to recommence broadcast operations."⁴ Cornbelt's petition for reconsideration does not indicate whether it complied with Sections 11.35(a), 17.4(g), and 73.49 of the Rules while its radio stations were still operating and does not indicate how it will achieve compliance in the event that its stations resume operation.

III. DISCUSSION

6. Cornbelt does not have a history of overall compliance. The Commission originally detected Cornbelt's violations of Sections 11.35(a), 17.4(g), and 73.49 of the Rules on April 25, 2001, and issued NOVs for those violations on May 7, 2001. These violations continued at least until February 27, 2002. Given this extended period of noncompliance and the recurrence of the violations after the issuance of NOVs, we cannot find that Cornbelt has a history of overall compliance.⁵ We find, however, on the basis of the financial information provided by Cornbelt, that Cornbelt is unable to pay the full forfeiture amount and that the forfeiture amount should be reduced to \$1,000.

7. There is no evidence that Cornbelt will actually comply with Sections 11.35(a), 17.4(g), and 73.49 of the Rules in the event that its stations resume broadcasting. Accordingly, we will require, pursuant to Section 308(b) of the Act,⁶ that Cornbelt report to the Enforcement

³ *Cornbelt Broadcasting Co.*, NAL/Acct. No. 200232320006 (Enf. Bur., Chicago District Office, rel. June 18, 2002).

⁴ In a letter dated November 5, 2002, Cornbelt informed the Commission that stations WHOW(AM) and WHOW-FM were off the air as the result of vandalism and the destruction of equipment by a former employee. The Commission's Media Bureau granted permission for WHOW(AM) and WHOW-FM to be silent and the Commission's license records indicate that those stations remain silent.

⁵ See *TV 45 Productions, Inc.*, 17 FCC Rcd 11259, 11261 (Enf. Bur. 2002), *Mount Rushmore citing Commercial Radio Service Corp.*, 16 FCC Rcd 3543, 3544 (Enf. Bur., Tech. & Pub. Safety Div. 2001) (duration of violation considered in determining whether there is a history of overall compliance).

⁶ 47 U.S.C. § 308(b)

Bureau no more than thirty (30) days prior to resuming broadcasting how it plans to achieve compliance with Sections 11.35(a), 17.4(g), and 73.49 in the event that its stations resume broadcasting. Cornbelt's report must be submitted in the form of an affidavit signed by an officer or director of the licensee.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act,⁷ and Section 1.106 of the Rules, Cornbelt's petition for reconsideration of the October 31, 2002, *Forfeiture Order* **IS GRANTED** to the extent that the monetary forfeiture **IS REDUCED** to \$1,000 and **IS DENIED** in all other respects.

9. **IT IS ALSO ORDERED** that, pursuant Section 308(b) of the Act, Cornbelt must submit the report described in Paragraph 7, above, no more than thirty (30) days prior to resuming broadcasting, to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Room 7-A820, Washington, D.C. 20554, Attention: Thomas D. Fitz-Gibbon, Esq.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*.⁸ 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.⁹ Payment may be made by mailing a check or similar instrument, payable to the 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 must include the FCC Registration Number ("FRN") referenced above, and should also 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. 20554.¹⁰

11. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class and by certified mail, return receipt requested, to Mr. James R. Livesay, II, Cornbelt Broadcasting Co., South Route 51, R.R. 2, Box 117M, Clinton, Illinois 61727-9518.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

⁷ 47 U.S.C. § 405.

⁸ 47 C.F.R. § 1.80.

⁹ 47 U.S.C. § 504(a).

¹⁰ See 47 C.F.R. § 1.1914.