

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

In the Matter of)	
)	
Adelphia Communications ¹)	File No. EB-02-CF-336
)	
Operator of Cable Television System in)	NAL/Acct. No. 200232340003
Huntington, West Virginia)	
)	FRN 0007-3942-16

FORFEITURE ORDER

Adopted: April 21, 2003

Released: April 23, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of two thousand dollars (\$2,000) to Adelphia Communications (“*Adelphia*”), operator of a cable television system in Huntington, West Virginia, for willful and repeated violation of Section 11.61(a) of the Commission’s Rules (“*Rules*”).² The noted violation involves Adelphia’s failure to conduct required weekly and monthly tests of the Emergency Alert System (“*EAS*”).

2. On July 19, 2002, the Commission’s Columbia, Maryland Field Office (“*Columbia Office*”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Adelphia for a forfeiture in the amount of two thousand dollars (\$2,000).³ Adelphia filed a response to the *NAL* on August 1, 2002.

II. BACKGROUND

3. On May 15, 2002, an agent from the Columbia Office inspected Adelphia’s Huntington, West Virginia cable system for compliance with the EAS rules. The agent found that Adelphia failed to conduct Required Weekly Tests (“*RWTs*”) of the EAS during the month of February 2002, and conducted RWTs only once per month during the months of March, April and May 2002. The agent also found that Adelphia failed to conduct Required Monthly Tests (“*RMTs*”) of the EAS during the period January 11, 2002 through May 15, 2002. Further, the agent determined that Adelphia had received no weekly or

¹ Although the *Notice of Apparent Liability for Forfeiture* (“*NAL*”) was issued to Adelphia Communications, Century Huntington Company, an affiliate of Adelphia, operates the Huntington cable system. Adelphia acquired Century Huntington in 1999 and filed the response to the *NAL* on behalf of Century Huntington. For convenience, we will continue to refer to the operator of the Huntington cable system as Adelphia.

² 47 C.F.R. § 11.61(a).

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232340003 (Enf. Bur., Columbia Office, released July 19, 2002).

monthly tests during the period January 11, 2002 through May 15, 2002. At the request of the agent, Adelphia transmitted a weekly test during the inspection, which revealed that the EAS equipment's automatic logging device was functioning properly.

4. On May 15, 2002, the agent conducted inspections of EAS equipment and procedures at Stations WEMM-FM and WHRD(AM) in Huntington. The EAS logs at these stations indicated that Stations WKEE-FM and WRVC(AM), which are the Local Primary stations that Adelphia is required to monitor,⁴ transmitted the RWTs and RMTs during the above periods.

5. On July 19, 2002, the Columbia Office issued an *NAL* to Adelphia for a \$2,000 forfeiture for failing to conduct required weekly and monthly EAS tests in willful and repeated violation of Section 11.61(a) of the Rules.⁵ In its response to the *NAL*, Adelphia does not dispute that it willfully and repeatedly violated Section 11.61(a). However, Adelphia states that it filed for Chapter 11 bankruptcy on July 25, 2002, and requests relief from the \$2,000 forfeiture proposed in the *NAL* in light of the financial hardship it now faces.

III. DISCUSSION

6. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, ("Act"),⁶ Section 1.80 of the Rules,⁷ 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 Adelphia'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.⁸

7. Section 11.61(a)(1) of the Rules requires cable systems to conduct monthly tests of the EAS header codes, attention signal, test script and End of Message ("EOM") code. Section 11.61(a)(2) of the Rules requires cable systems to conduct weekly tests of the EAS header codes and EOM codes. At the time of the inspection on May 15, 2002, Adelphia's records showed that it failed to conduct RWTs during February 2002 and that it conducted RWTs only once per month during March, April and May 2002. In addition, Adelphia's records showed that it failed to conduct RMTs during the period January 11, 2002 through May 15, 2002. Adelphia does not dispute that it failed to conduct RWTs and RMTs

⁴ Broadcast stations and cable television stations are required to monitor two EAS sources, which are specified in the state EAS plan. 47 C.F.R. § 11.52(d).

⁵ The *NAL* noted that there is no base forfeiture amount specified in the rules for failure to conduct required EAS tests. However, the *NAL* found that failure to conduct required EAS tests is similar in both nature and severity to failure to make required measurements or conduct required monitoring, which has a base forfeiture amount of \$2,000. See 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): *Section I--Base Amounts for Section 503 Forfeitures*. The *NAL* accordingly concluded that \$2,000 is an appropriate base forfeiture amount for failure to conduct required EAS tests.

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ 47 U.S.C. § 503(b)(2)(D).

during these periods. Accordingly, we conclude that Adelphia willfully⁹ and repeatedly¹⁰ violated Section 11.61(a) of the Rules.

8. Adelphia seeks waiver of the \$2,000 forfeiture proposed in the *NAL* because it has filed for Chapter 11 bankruptcy. However, as explicitly stated in the *NAL*, the Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Adelphia did not provide any financial documentation in support of its request for waiver of the forfeiture and, therefore, we have no basis upon which to analyze its inability to pay claim.¹¹ Further, although there is precedent for rescinding or reducing a forfeiture based on bankruptcy in certain circumstances,¹² we do not believe that Adelphia has justified rescission or reduction of the forfeiture in this case because it has not provided any financial documentation for the Bureau's analysis, and because, even though it has filed bankruptcy, it retains control over its assets. Moreover, filing for bankruptcy does not preclude the Commission from issuing an order imposing a forfeiture upon Adelphia for violating its rules.¹³

9. We have examined Adelphia'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 Adelphia willfully and repeatedly violated Section 11.61(a) of the Rules, and we find no basis for rescinding or reducing the \$2,000 forfeiture for this violation.

⁹ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and 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 authorized by this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹⁰ Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

¹¹ We also note that on July 18, 2002, the Commission's Atlanta, Georgia Field Office ("Atlanta Office") issued an *NAL* to Adelphia for an \$8,000 forfeiture for failure to maintain operational EAS equipment at its Cullman, Alabama cable system in willful and repeated violation of Section 11.35(a) of the Rules, 47 C.F.R. § 11.35(a). See *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232480013 (Enf. Bur., Atlanta Office, released July 18, 2002). On October 3, 2002, Adelphia paid this \$8,000 forfeiture in full.

¹² See, e.g., *Dennis Elam, Trustee for Bakcor Broadcasting, Inc., Debtor*, 11 FCC Rcd 1137 (1996) (forfeiture rescinded after bankruptcy trustee was appointed and the violator was no longer associated with the subject radio stations); *Interstate Savings, Inc. d/b/a ISI Communications*, 12 FCC Rcd 2934 (CCB 1997) (forfeiture rescinded where trustee was appointed in Chapter 7 liquidation, removing violator from operating as a common carrier and from involvement in dissolution or distribution of assets).

¹³ See 11 U.S.C. § 362(b)(4). See *Coleman Enterprises, Inc.*, 15 FCC Rcd 24385, 24389 n. 28 (2000) (filing for Chapter 11 bankruptcy does not preclude the Commission from issuing a Forfeiture Order). See also *United States of America v. Commonwealth Companies, Inc.*, 913 F.2d 518 (8th Cir. 1990).

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503 of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁴ Adelphia Communications **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of two thousand dollars (\$2,000) for willful and repeated violation of Section 11.61(a) of the Rules.

11. Unless excused by operation of law, 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*.¹⁵ 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 reference NAL/Acct. No. 200232340003 and FRN 0007-3942-16. 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. 20554.¹⁷

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail, return receipt requested, to Adelphia Communications, 1 North Main Street, Coudersport, Pennsylvania 16915-1141.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

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

¹⁵ We recognize that Adelphia is currently in Chapter 11 bankruptcy proceedings, and that any collection of the amount assessed against it may be subject to applicable statutory constraints, including 11 U.S.C. § 362.

¹⁶ 47 U.S.C. § 504(a).

¹⁷ See 47 C.F.R. § 1.1914.