

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

In the Matter of)	
)	
Lighthouse Broadcasting)	File No. EB-02-AT-243
)	NAL/Acct. No. 200232480014
Former Licensee of Station WBIC(AM))	FRN 0007-3941-09
Royston, Georgia)	

MEMORANDUM OPINION AND ORDER

Adopted: May 9, 2003

Released: May 13, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“*Order*”), we cancel the proposed monetary forfeiture in the amount of twelve thousand dollars (\$12,000) issued to Lighthouse Broadcasting (“Lighthouse”), former licensee of Station WBIC(AM), Royston, Georgia, for failure to maintain operational Emergency Alert System (“EAS”) equipment and failure to reduce power at WBIC(AM) during post sunset hours and discontinue operation of WBIC(AM) at night, in apparent violation of Sections 11.35(a) and 73.1745 of the Commission’s Rules (“Rules”).¹ However, we conclude that Lighthouse violated Sections 11.35(a) and 73.1745 and admonish Lighthouse for these violations.

2. On July 30, 2002, the Commission’s Atlanta, Georgia Field Office (“Atlanta Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Lighthouse for a forfeiture in the amount of twelve thousand dollars (\$12,000).² Lighthouse filed a response to the NAL on October 3, 2002.

II. BACKGROUND

3. On June 18, 2002, an agent from the Atlanta Office monitored WBIC(AM)’s signal before sunset, through sundown, and into the nighttime hours until 11 p.m. Eastern Daylight Savings Time (“EDT”), when the station discontinued operation. The agent conducted field strength measurements of the station’s signal during this time period and determined that WBIC(AM) failed to reduce power in accordance with its post sunset authority and failed to discontinue operation at 10:45 p.m. EDT in accordance with its station authorization.³

¹ 47 C.F.R. §§ 11.35(a) and 73.1745.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232480014 (Enf. Bur., Atlanta Office, released July 30, 2002).

³ WBIC(AM) is a daytime-only station, licensed to operate at 230 watts. The station has post sunset authority in the month of June to operate at 3.5 watts from 8:45 to 9:45 p.m. EDT and then 1.8 watts from 9:45 to 10:45 p.m. EDT. The station has no authority to operate beyond 10:45 p.m. EDT.

4. On June 19, 2002, the agent again monitored WBIC(AM)'s signal before sunset, through sundown, and into the nighttime hours, conducted field strength measurements, and determined that the station again failed to reduce power according to its post sunset authority and discontinue operation at 10:45 p.m. EDT. The agent noted that the station signed off the air at 11:23 p.m. EDT, but continued to transmit an unmodulated carrier until at least midnight.

5. On June 20, 2002, the agent conducted an inspection of WBIC(AM) at its main studio with Louis Hawkins, the general manager of the station. The agent observed that the EAS encoder/decoder was turned on, but station staff was unable to demonstrate operation of the equipment. Mr. Hawkins provided invoices indicating that a new EAS power supply was ordered on May 9, 2002, and installed on May 16, 2002, but there was no evidence that any tests or alerts had been received or sent since that date. There were also no log entries or other evidence to indicate that the EAS equipment had ever been in operation or taken out of service. The agent also found that the EAS equipment appeared to be incapable of receiving two EAS sources. Furthermore, the agent noted that on the May 16, 2002 invoice for installation of the power supply, the engineer indicated that reception was "very poor on the two monitored stations" and that "better receivers and an outside antenna" should be installed.

6. On July 8, 2002, the Atlanta Office received a copy of a report dated July 5, 2002, written by WBIC(AM)'s contract engineer. The report indicated that two new FM receivers had been installed, but that there was still an apparent problem with the EAS encoder/decoder and that it was being taken out of service for further trouble shooting or repair.

7. On July 9, 2002, the agent interviewed by telephone Joseph Hood, the owner of Lighthouse. Mr. Hood admitted that the EAS equipment had been broken several months prior to the time that Mr. Hawkins had started employment as general manager of the station in May 2002. Mr. Hood stated that he could not afford to have the equipment repaired. He also stated that he did not have any logs or other evidence to demonstrate that the EAS equipment had ever been operational or that it had been taken out of service for repair.

8. On July 30, 2002, the Atlanta Office issued an *NAL* finding Lighthouse apparently liable for a \$12,000 forfeiture for failure to maintain operational EAS equipment in willful and repeated violation of Section 11.35(a) of the Rules and failure to reduce power at WBIC(AM) during post sunset hours and to discontinue operation of WBIC(AM) at night in willful and repeated violation of Section 73.1745 of the Rules. In his response to the *NAL*, Mr. Hood, the owner of Lighthouse, does not dispute that these violations occurred. However, Mr. Hood states that at the time the unauthorized nighttime operation of the station was observed, he was no longer involved with the daily operation of the station. In this regard, Mr. Hood states that Lighthouse "leased" the station to Peachland Music beginning April 1, 2002.⁴ Mr. Hood further states that he spoke with Mr. Hawkins and instructed him to discontinue all after hours operation of the station. Additionally, Mr. Hood states that he could not afford to have the EAS equipment repaired, but that Mr. Hawkins had the equipment repaired and it is now functioning properly. Finally, Mr. Hood asserts that he cannot afford to pay the forfeiture. In support of this assertion, Mr. Hood submits his tax returns for 2000 and 2001 and notes that he is selling the station for substantially less than he paid for it two years ago.⁵

⁴ We take no view at this point whether there may have been an unauthorized transfer of control of the station.

⁵ An application to assign the license for WBIC(AM) from Lighthouse to Diane E. Hawkins was accepted for

III. DISCUSSION

9. 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 Lighthouse’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

10. Section 11.35(a) of the Rules requires broadcast stations to install and maintain operational EAS equipment so that monitoring and transmitting functions are available during the times when the station is in operation. At the time of the inspection on June 20, 2002, WBIC(AM)’s EAS equipment was not operational. Although there had been recent attempts to repair the EAS equipment prior to the inspection, there were no logs or other evidence indicating that the equipment had ever been operational or had been taken out of service for repair. In addition, Mr. Hood admitted to the agent that the equipment had been broken several months prior to the inspection. Accordingly, we conclude that Lighthouse violated Section 11.35(a) of the Rules.

11. Section 73.1745 of the Rules provides that no broadcast station shall operate at times, or with modes or power, other than those specified in the station authorization. WBIC(AM) is a daytime-only station, with limited authorization to operate during post sunset hours in the month of June at reduced power. On June 18 and June 19, 2002, WBIC(AM) failed to reduce power during post sunset hours and to discontinue operation after expiration of the authorized post sunset hours. Lighthouse does not dispute that these violations occurred. Accordingly, we find that Lighthouse violated Section 73.1745 of the Rules.

12. Mr. Hood indicates that he was no longer involved with the daily operation of WBIC(AM) at the time the unauthorized nighttime operation of the station was observed. However, as licensee of WBIC(AM), Lighthouse was required to maintain control over the operation of the station and was responsible for acts and omissions of its agents.⁹ Moreover, while Mr. Hood states that the violations have been corrected, the Commission has stated that remedial actions taken to correct a violation, while commendable, are not mitigating factors warranting reduction of a forfeiture.¹⁰

filing on February 4, 2003 (File No. BAL-20030131ABU).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ See *Eure Family Limited Partnership*, 17 FCC Rcd 21861 (2002); *MTD, Inc.*, 6 FCC Rcd 34, 35 (1991); *Wagenvoord Broadcasting Co.*, 35 FCC 2d 361 (1972).

¹⁰ See e.g., *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002); *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994); *Station KGV L, Inc.*, 42 FCC 2d 258, 259 (1973).

13. Mr. Hood also asserts that he is unable to pay the proposed \$12,000 forfeiture. The Commission has repeatedly held that a company's gross revenues are the best indicator of its ability to pay a forfeiture.¹¹ The financial information submitted by Mr. Hood supports his claim that payment of a \$12,000 forfeiture would impose a hardship on Lighthouse. Furthermore, we note that Lighthouse has recently assigned the license for WBIC(AM) and is no longer a Commission licensee.¹² Therefore, we conclude that cancellation of the forfeiture is warranted. Nevertheless, we admonish Lighthouse for its violations of Sections 11.35(a) and 73.1745 of the Rules.

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹³ the forfeiture in the amount of twelve thousand dollars (\$12,000) proposed in the July 30, 2002 *NAL* issued to Lighthouse Broadcasting **IS CANCELLED**.

15. **IT IS FURTHER ORDERED** that Lighthouse Broadcasting **IS ADMONISHED** for failure to maintain operational EAS equipment at WBIC(AM) in violation of Section 11.35(a) of the Rules and failure to reduce power at WBIC(AM) during post sunset hours and discontinue operation of WBIC(AM) at night in violation of Section 73.1745 of the Rules.

16. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail, return receipt requested, to Lighthouse Broadcasting, 2735 Bryant Park Road, Canon, Georgia 30520.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹¹ See *Long Distance Direct, Inc.*, 15 FCC Rcd 3297, 3305 (2000); *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1991). The Commission has also stated that if gross revenues are sufficiently great, the existence of operating losses does not by itself mean that a company cannot afford to pay a forfeiture. *Id.*

¹² The Commission staff granted the application to assign the license for WBIC(AM) on March 13, 2003, and the assignment was consummated on April 3, 2003.

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