

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

In the Matter of)	
)	
Blue Skies Broadcasting Corporation)	File No. EB-02-SD-075
KSKT-CA)	
)	NAL/Acct. No. 200232940006
)	
San Marcos, CA)	FRN 0003-7774-06

FORFEITURE ORDER

Adopted: July 18, 2003

Released: July 22, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of one thousand eight hundred dollars (\$1,800) to Blue Skies Broadcasting Corporation (“Blue Skies”), for willful violations of Sections 11.35(a) and 73.1125(c) of the Commission’s Rules (“Rules”).¹ The noted violations involve Blue Skies’ failure to have an operational Emergency Alert System (“EAS”) installed, and its failure to have a main studio within the predicted Grade B contour of station KSKT-CA.²

2. On July 31, 2002, the Commission’s San Diego, California, Field Office (“San Diego Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Blue Skies for a forfeiture in the amount of fifteen thousand dollars (\$15,000).³ Blue Skies filed its response to the *NAL* on September 3, 2002.

II. BACKGROUND

3. Blue Skies is the licensee of Class A Television Broadcast station KSKT-CA. On March 6, 2002, an agent from the San Diego Office planned to conduct a routine inspection of the EAS equipment for station KSKT-CA but could not find a local telephone number or studio address for that station. On March 8, 2002, the agent placed a telephone call to a number listed in Blue Skies’ most recent application and spoke to Mr. Robert Ruiz, the president of Blue Skies. Mr. Ruiz stated that Blue Skies closed the main studio for KSKT-CA in December 2001 for financial reasons and removed the station’s EAS equipment from service at the same time.

¹ 47 C.F.R. §§ 11.35(a) and 73.1125(c).

² The *NAL* also alleged a violation of 47 C.F.R. § 11.61. We will not address this allegation in this *Forfeiture Order*, because the *NAL* did not specify a forfeiture amount for violation of Section 11.61.

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232940006 (Enf. Bur., San Diego Office, released July 31, 2002).

4. On April 12, 2002, agents from the San Diego Office inspected the transmitter site for station KSKT-CA. They observed that the station's EAS equipment was installed but was not capable of receiving or transmitting the required weekly and monthly EAS tests and, therefore, was not fully operational.

5. On July 31, 2002, the San Diego Office issued a *NAL* for a forfeiture in the amount of \$15,000 to Blue Skies for failure to have operational EAS equipment installed and failure to have a main studio within the predicted grade B contour of station KSKT-CA. In its response, filed September 3, 2002, Blue Skies admits that it closed its main studio for financial reasons and that it did not have fully operational EAS equipment. Blue Skies, however, seeks cancellation or reduction of the proposed monetary forfeiture. Blue Skies states that its EAS equipment is now fully operational and that it has "arranged" to have a main studio at 2230 Micro Place, Escondido, California, a location it believes to be within KSKT-CA's Grade B contour. Blue Skies argues that the full forfeiture amount of \$15,000 should not be imposed because its violations are not as significant as those of stations which have never had main studios or EAS equipment. Blue Skies also argues that payment of the proposed forfeiture amount of \$15,000 would be a financial hardship.

6. On March 4 and July 11, 2003, agents from the San Diego office traveled to Escondido, California, to determine whether station KSKT-CA has a main studio at 2230 Micro Place. On both occasions, the agents found that there is no main studio at that location.

III. DISCUSSION

7. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁴ Section 1.80 of the Rules,⁵ 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 Blue Skies'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.⁶

8. Section 11.35(a) of the Rules requires that broadcast stations have operational EAS equipment. Section 73.1125(c) of the Rules requires that broadcast stations maintain a main studio within the station's predicted Grade B contour. On the basis of the FCC agents' investigation and Blue Skies' admissions, we conclude that Blue Skies violated Sections 11.35(a) and 73.1125(c) of the Rules. In view of Blue Skies' statement that it closed its main studio for financial reasons and removed its EAS equipment from service at the same time, we find that Blue Skies' violations of Sections 11.35(a) and 73.1125(c) of the Rules were willful.

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C. § 503(b)(2)(D).

9. Blue Skies argues that the full forfeiture amount of \$15,000 should not be imposed because its violations are not as significant as those of stations which never had main studios or EAS equipment. Blue Skies' deliberately closed its main studio and removed its EAS equipment from service. The main studio violation has continued for more than 18 months following the closure and is still uncorrected (as of July 11, 2003). Blue Skies did not take any steps to make its EAS equipment fully operational until after our inspection of its station facilities. The fact that there may be licensees whose violations are even more significant than Blue Skies' violations does not mitigate the seriousness of Blue Skies' violations.⁷

10. To the extent that Blue Skies now has operable EAS equipment, no mitigation is warranted on the basis of its correction of the violation. As the Commission stated in *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994), "corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations."⁸

11. Blue Skies also contends that payment of the proposed forfeiture amount of \$15,000 would be a financial hardship. In support of this contention, Blue Skies submits copies of its 2000 and 2001 federal income tax returns and other information. Upon review of this financial documentation, we conclude that the forfeiture amount should be reduced to \$1,800.

12. We have examined Blue Skies' 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 Blue Skies willfully violated Sections 11.35(a) and 73.1125(c) of the Rules. We find that, while there is no basis for cancellation of the proposed monetary forfeiture, a reduction to \$1,800 is warranted on the basis of financial hardship.

13. The agents' investigation on July 11, 2003, indicates that, as of that date, Blue Skies still had no main studio and, therefore, continued to violate Section 73.1125(c) of the Rules even after issuance of the *NAL* and Blue Skies' promise to "arrange" to have a main studio. Accordingly, we will require, pursuant to Section 308(b) of the Act,⁹ that Blue Skies report to the Enforcement Bureau within thirty (30) days of the release of this *Order* whether it has established a main studio as it claims it plans to do in its response to the *NAL*. If the report indicates that Blue Skies has a main studio, it must specify the main studio's location and telephone number. Blue Skies' report must be submitted in the form of an affidavit signed by an officer or director of the licensee. If Blue Skies fails to submit such a report or we find that Blue Skies has not come into compliance with our main studio rule, we will consider further appropriate enforcement action.

IV. ORDERING CLAUSES

⁷ See, e.g., *Cornbelt Broadcasting Co.*, 18 FCC Rcd 6336 (Enf. Bur. 2003); and *Banjo Communications Group, Inc.*, 17 FCC Rcd 26101 (Enf. Bur. 2002).

⁸ See also *Callais Cablevision, Inc.*, 17 FCC Rcd 22626, 22629 (2002); *Radio Station KGVL, Inc.*, 42 FCC 2d 258, 259 (1973); and *Executive Broadcasting Corp.*, 3 FCC 2d 699, 700 (1966).

⁹ 47 U.S.C. § 308(b)

14. 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,¹⁰ Blue Skies **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one thousand dollars eight hundred (\$1,800) for failure to have operational EAS equipment installed and failure to have a main studio within the station's predicted Grade B contour, in willful violation of Sections 11.35(a) and 73.1125(c) of the Rules.

15. **IT IS ALSO ORDERED** that, pursuant Section 308(b) of the Act, Blue Skies must submit the report described in Paragraph 13, above, within 30 days from the release of this *Order*, to Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Room 7-A 820, Washington, D.C. 20554.

16. 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*. 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.¹¹ 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. 200232940006 and FRN 0003-7774-06. 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. 20554.¹²

17. **IT IS FURTHER ORDERED** that copies of this *Order* shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Blue Skies Broadcasting Corporation, 5220 Campo Road Woodland Hills, CA 91364, and to its counsel, Peter Tannenwald, Esq., Irwin, Campbell & Tannenwald, P.C., 1730 Rhode Island Avenue, N.W., Suite 200, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

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

¹¹ 47 U.S.C. § 504(a).

¹² See 47 C.F.R. § 1.1914.