

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

In the Matter of	)	
	)	
Floyd County Broadcasting Company, Inc.	)	File Number EB-02-DT-988
WMDJ-FM	)	NAL/Acct. No. 200332360001
Allen, Kentucky	)	FRN: 0005-0045-51
	)	

**FORFEITURE ORDER**

**Adopted: June 2, 2004**

**Released: June 4, 2004**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000) to Floyd County Broadcasting Company, Inc. (“Floyd County Broadcasting”), the licensee of WMDJ-FM, Allen, Kentucky for willful and repeated violation of Section 11.35(a) of the Commission’s Rules (“Rules”).<sup>1</sup> The noted violation involves Floyd County Broadcasting’s failure to have Emergency Alert System (“EAS”) equipment installed and operating.

2. On November 6, 2002, the Commission’s Detroit, Michigan District Office (“Detroit Office”) released a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Floyd County Broadcasting in the amount of eight thousand dollars (\$8,000).<sup>2</sup> Floyd County Broadcasting filed a response on November 21, 2002.

**II. BACKGROUND**

3. On July 30, 2002, an FCC agent from the Detroit Office conducted an EAS equipment inspection of WMDJ-FM. At the time of inspection, he found no EAS equipment installed. The station manager told him that WMDJ-FM had never installed any EAS generating and receiving equipment at the station.

4. As a result of the inspection, on November 6, 2002, the Detroit Office issued the subject *NAL* to Floyd County Broadcasting finding that it willfully and repeatedly violated Section 11.35 of the Rules. In its response, Floyd County Broadcasting does not challenge the findings of the *NAL*, that it willfully and repeatedly violated Section 11.35(a) of the Rules. Rather, the licensee seeks reduction or cancellation of the forfeiture based upon its inability to pay the forfeiture.

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<sup>1</sup> 47 C.F.R. § 11.35(a).

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332360001 (Enf. Bur., Detroit Office, released November 6, 2002).

### III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) 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*.<sup>5</sup> In examining Floyd County Broadcasting’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 such other matters as justice may require.<sup>6</sup>

6. Section 11.35(a) of the Rules provides that broadcast stations are responsible for ensuring that EAS Encoders, EAS Decoders, and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during times the stations and systems are in operation. An FCC inspection of WMDJ-FM revealed that no EAS equipment was installed. Floyd County Broadcasting admitted in its response to the *NAL* that there was no EAS equipment at the station.<sup>7</sup>

7. Based on the findings of the *NAL* and Floyd County Broadcasting’s response thereto, we find that Floyd County Broadcasting’s violation of Section 11.35(a) of the Rules was willful<sup>8</sup> and repeated.<sup>9</sup>

8. In support of its request for cancellation or reduction of the proposed forfeiture, Floyd County Broadcasting submits federal income tax returns for years 1999, 2000, and 2001.<sup>10</sup> The

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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> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>6</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>7</sup> Floyd County Broadcasting also states that it ordered EAS equipment immediately following the inspection and had it in place and operational the very next day. However, it is well established that “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.” *See Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994).

<sup>8</sup> 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).

<sup>9</sup> As provided by 47 U.S.C. § 312(f)(2), a continuous violation is “repeated” if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. *See H.R. Rep. 97<sup>th</sup> Cong. 2d Sess. 51 (1982)*. *See Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn 56 (2003).

<sup>10</sup> Floyd County Broadcasting also seeks cancellation or reduction of the proposed forfeiture because its

Commission has determined that, in general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.<sup>11</sup> After reviewing the financial data submitted, we find no evidence in Floyd County Broadcasting's response that would support cancellation of the forfeiture or a reduction based upon inability to pay.<sup>12</sup>

#### IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act<sup>13</sup>, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules<sup>14</sup>, Floyd County Broadcasting, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand dollars (\$8,000) for its willful and repeated violation of Section 11.35(a) of the Rules.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules<sup>15</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>16</sup> Payment may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or 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. 200332360001, and FRN: 0005-0045-51 referenced above. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.<sup>17</sup>

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advertising "Rate Card" would allegedly demonstrate that its market is so small that cancellation or reduction would be warranted. As stated herein a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. See footnote 11, *infra*. We will therefore focus on the information provided in the licensee's tax returns to determine its ability to pay the forfeiture.

<sup>11</sup> See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992).

<sup>12</sup> *Id.* at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Afton Communications Corp.*, 7 FCC Rcd 6741 (Com. Car. Bur. 1992) (forfeiture not deemed excessive where it represented approximately 3.9 percent of the violator's gross revenues).

<sup>13</sup> 47 U.S.C. § 503(b).

<sup>14</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>15</sup> 47 C.F.R. § 1.80.

<sup>16</sup> 47 U.S.C. § 504(a).

<sup>17</sup> See 47 C.F.R. § 1.1914.

11. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by Certified Mail, Return Receipt Requested, to Floyd County Broadcasting Company, Inc., P.O. Box 1530, 1428 Highway 80, Martin, Kentucky 41649.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau