

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

In the Matter of)	
)	
Charles R. Meeker)	File No. EB-02-SD-285
Licensee of Station KDPX-LP)	NAL/Acct. No. 200332940002
Cathedral City, California)	FRN 000-619-9038
)	
)	

FORFEITURE ORDER

Adopted: July 1, 2004

Released: July 2, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of six thousand four hundred (\$6,400) to Charles R. Meeker (“Meeker”), Licensee of Class A Television Broadcast (“Class A”) station KDPX-LP, for willful and repeated violation of Section 11.35 of the Commission’s Rules (“Rules”).¹ The noted violation involves Meeker’s failure to ensure that required Emergency Alert System (“EAS”) equipment was installed and operational.

2. On January 31, 2003, the Commission's San Diego, California Field Office (“San Diego Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Meeker in the amount of eight thousand dollars (\$8,000).² Meeker filed a response to the *NAL* on March 4, 2003.

II. BACKGROUND

3. On November 14, 2002, an agent from the Federal Communications Commission’s (“FCC”) San Diego office attempted to conduct a routine inspection of the EAS equipment of station KDPX-LP. The license for station KDPX-LP had been issued to Meeker on September 10, 2001. The agent found no operational EAS equipment at the main studio and the general manager advised that there was no EAS equipment at KDPX-LP’s transmitter site. The general manager of KDPX-LP also advised the agent that the station’s EAS equipment was taken out of service many months ago. However, no

¹47 C.F.R. § 11.35.

²*Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332940002 (Enf. Bur., San Diego Office, released January 31, 2003).

evidence or documentation could be found to verify the EAS equipment condition nor did the licensee maintain a station log of any previous EAS tests.

4. On January 31, 2003, the San Diego Office issued the *NAL* for violation of Section 11.35 of the Rules. On March 4, 2003, Meeker submitted a response to the *NAL*. In that response, Meeker does not challenge the findings of the *NAL* that he willfully and repeatedly violated Section 11.35 of the Rules. Rather, the licensee seeks a reduction in the amount of the proposed forfeiture based on the fact that he has made the appropriate corrections to the station, that he has had no other violations, that he does not have the ability to pay the forfeiture, that the forfeiture will have a detrimental effect on the station and that the size of the forfeiture is disproportionate to the size of station. The response is accompanied by an exhibit entitled "Deposit Detail" along with a copy of an arbitration decision concerning Meeker.

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"),³ Section 1.80 of the Rules,⁴ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("*Forfeiture Policy Statement*").⁵ In examining Meeker'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

6. Section 11.35 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 a part of the EAS are installed so that the monitoring and transmitting functions are available during times that stations and systems are in operation. An FCC inspection of KDPX-LP revealed that there was no operational EAS equipment at the main studio and the general manager advised that there was no EAS equipment at KDPX-LP's transmitter site. In addition, no evidence or documentation could be found to verify the EAS equipment condition nor did the licensee maintain a station log of any previous EAS tests. In his response, Meeker does not challenge the findings of the *NAL* that he willfully and repeatedly violated Section 11.35 of the Rules.

7. Meeker seeks a reduction in the amount of the proposed forfeiture arguing that he does not have the ability to pay the forfeiture, that the forfeiture will have a detrimental effect on the station and that the size of the forfeiture is disproportionate to the size of station. Meeker states that KDPX-LP had losses in excess of its revenue in 2002 and submits a one-page document entitled "Deposit Detail" to support this claim along with copy of an arbitration decision in Meeker's favor, unrelated to KDPX-LP, which notes that Meeker sustained economic losses to due to an unperformed contract.⁷ However, the

³47 U.S.C. § 503(b).

⁴47 C.F.R. § 1.80.

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

⁶47 U.S.C. § 503(b)(2)(D).

⁷The arbitration decision awards Meeker and another individual significant damages which Meeker states in his response he has not yet been able to collect.

NAL specifically states that “[t]he 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.”⁸ Meeker’s submission is not supported in this manner and, therefore, provides no reliable basis for Meeker’s claims.⁹ In addition, after reviewing the financial data submitted, we find no evidence in Meeker’s response that would support a reduction in the forfeiture based on Meeker’s inability to pay, nor do we find any evidence that the size of the forfeiture is disproportionate to the size of the station and would have a detrimental effect on the station.¹⁰

8. Meeker also seeks a reduction in the amount of the proposed forfeiture based on the fact that he has made the appropriate corrections to the station. We note that the Commission has repeatedly stated that remedial actions taken to correct a violation are not mitigating factors warranting reduction of a forfeiture.¹¹ Finally, in support of his request for reduction, Meeker states that he has never had an FCC action taken against him. We have reviewed Meeker’s records and we concur.

9. Based on the findings of the *NAL* and Meeker’s response thereto, we find that Meeker’s violation of Section 11.35 was willful¹² and repeated.¹³ Considering the entire record and the factors listed above, we find that reduction of the proposed forfeiture is warranted because of Meeker’s compliance record with the Commission’s Rules. Accordingly, the forfeiture amount is reduced from eight thousand dollars (\$8,000) to six thousand four hundred dollars (\$6,400).

⁸*NAL* at 4.

⁹See *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640, 8641 (2000).

¹⁰See *Alpha Ambulance, Inc.*, 19 FCC Rcd 2547(2004); *PJB Communications of Virginia*, 7 FCC Rcd 2088, 2089 (1992).

¹¹See, 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).

¹² 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).

¹³As 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. 97th 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).

IV. ORDERING CLAUSES

10. 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,¹⁴ Charles R. Meeker, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of six thousand four hundred dollars (\$6,400) for willfully and repeatedly violating Section 11.35 of the Rules.

11. 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.¹⁵ Payment shall 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 note NAL/Acct. No. 200332940002 and FRN: 000-619-9038. 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. 20554.¹⁶

12. **IT IS FURTHER ORDERED** that, a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Charles R. Meeker, 2225 Skyway Drive, Suite A, Santa Maria, California, 93455.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

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

¹⁵47 U.S.C. § 504(a).

¹⁶See 47 C.F.R. § 1.1914.