

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

In the Matter of)	
)	File Number EB-04-OR-103
Delta Radio Greenville, LLC)	
Licensee of WROX(AM))	NAL/Acct. No.200432620005
in Clarksdale, Mississippi)	
Las Vegas, Nevada)	FRN 0007689243
)	
)	

FORFEITURE ORDER

Adopted: September 29, 2004

Released: October 1, 2004

By the Assistant Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of twelve thousand dollars (\$12,000) to Delta Radio Greenville, LLC (“Delta”), licensee of radio station WROX(AM), Clarksdale, Mississippi, for willful and repeated violation of Sections 11.35(a) and 73.49 of the Commission's Rules (“Rules”).¹ The noted violations involve Delta’s failure to maintain operational Emergency Alert System (“EAS”) equipment and failure to enclose its antenna structure within an effective locked fence or other enclosure.

II. BACKGROUND

2. On May 12, 2004, an agent of the Commission’s New Orleans Field Office of the Enforcement Bureau (“New Orleans Office”) observed the antenna structure of WROX(AM) and discovered that one side of the fence enclosing the antenna structure was lying on the ground. The agent easily walked over the downed section of fence to the base of the antenna structure, which had radio frequency potential at its base.

3. On May 13, 2004, the agent inspected WROX(AM) and found that there was no EAS equipment present. In addition, there was no evidence that the equipment had been removed from service for repair.² The General Manager of the station admitted that no EAS equipment had been present at WROX(AM) since his arrival at the station in October 2003. When shown that one side of the fence enclosing WROX(AM)’s antenna structure was lying on the ground, he stated the fence had been this way for the same period of time.

4. On July 21, 2004, the New Orleans Office issued a *Notice of Apparent Liability for Forfeiture* to Delta in the amount of fifteen thousand dollars (\$15,000) for the apparent willful and

¹47 C.F.R. §§ 11.35(a) and 73.49.

²See 47 C.F.R. § 11.35(b).

repeated failure to maintain operational EAS equipment and enclose its antenna structure within an effective locked fence as required by Sections 11.35(a) and 73.49 of the Rules.³ In its response, Delta's President requests a cancellation of the forfeiture because he claims he was unaware of the conditions that led to the issuance of the *NAL*. He asserts that the former station manager or the announcer stored the EAS equipment while the station relocated and failed to return the equipment. He further states that the current station manager did not inform him that the station was missing EAS equipment. He claims that Delta's Vice President inspected the fence surrounding the antenna on February 7, 2004 and found it adequate. He claims that upon learning of the missing EAS equipment and damaged fence, Delta immediately purchased EAS equipment and scheduled a visit to inspect the fence. He asserts if the fence was damaged after February 7, 2004 such damage was most likely the result of vandalism. Finally, he argues the forfeiture should be reduced based on the station's long-time record of compliance with the Rules and the station's financial situation.

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Commission's Rules ("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) ("*Forfeiture Policy Statement*"). In examining Delta'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(a) of the Rules requires that broadcast stations maintain operational EAS encoders, decoders, and attention signal generating and receiving equipment so that monitoring and transmitting functions are available during the times the stations are in operation.⁷ On May 13, 2004, WROX(AM) had no EAS equipment and the General Manager of the station admitted that WROX(AM) had not had EAS equipment since at least October 2003. There was no evidence or logs that WROX(AM) ever had installed EAS equipment or ever maintained operational EAS equipment, nor were there log entries indicating that the equipment was under repair. Delta's President does not deny that the station did not maintain EAS equipment, but argues he was the "victim of a dishonest station manager and the unfortunate death of a station employee."⁸ However, "[t]he Commission has long held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors and has consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations."⁹ We find that Delta's

³*Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200432620005 (Enf. Bur., New Orleans Office, July 21, 2004) ("*NAL*").

⁴47 U.S.C. § 503(b).

⁵47 C.F.R. § 1.80.

⁶47 U.S.C. § 503(b)(2)(D).

⁷47 C.F.R. § 11.35(a).

⁸Delta response at 2.

⁹*Eure Family Limited Partnership*, 17 FCC Rcd 21861, 21863-64 (2002) and cases cited therein.

violation of Section 11.35(a) of the Rules was willful¹⁰ and repeated.¹¹

7. Section 73.49 of the Rules requires that antenna towers having radio frequency potential at the base must be enclosed within effective locked fences or other enclosures.¹² On May 12 and 13, 2004, WROX(AM)'s antenna structure was not enclosed by an effective locked fence or enclosure. Although the fence surrounding the antenna structure may have been effective on February 7, 2004, as alleged by Delta's President, the fence was damaged on May 12 and 13, 2004, and the General Manager admitted that it had been damaged for some time. It is irrelevant whether, as Delta claims, the damage may have been the result of vandalism. Even if vandals caused the damage, Delta should have repaired the fence to ensure that it was effectively enclosing the antenna tower. We find that Delta's violation of Section 73.49 of the Rules was willful and repeated.

8. Delta asserts that the forfeiture should be reduced based on its long-time record of compliance with the Rules. After considering Delta's past history of compliance, we conclude that a reduction of the forfeiture amount to \$12,000 is appropriate.¹³

9. Delta also requests a reduction of the proposed forfeiture based on its financial situation and its prompt actions to correct the problems. As explicitly stated in the *NAL*, we 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 ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Delta has not provided any financial documentation to support a claim of inability to pay; therefore, we have no basis to reduce the forfeiture on grounds of inability to pay.¹⁴ Moreover, Delta's remedial actions to correct promptly violations after they have been identified by an agent is expected and does not warrant a reduction in the forfeiture amount.¹⁵

10. We have examined Delta's response to the *NAL* pursuant to the statutory factors above,

¹⁰Section 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).

¹¹As 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).

¹²47 C.F.R. § 73.49.

¹³See *South Central Communications Corp.*, 17 FCC Rcd 22701 (Enf. Bur. 2002).

¹⁴The Commission has determined that, in general, gross revenues are the best indicator of the ability to pay a forfeiture. See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992).

¹⁵See *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21861, 21864-75 (2002); *Sonderling Broadcasting Corp.*, 69 FCC 2d 289, 291 (1978); *Odino Joseph*, 18 FCC Rcd 16522, 16524, para. 8 (Enf. Bur. 2003); *South Central Communications Corp.*, 18 FCC Rcd 700, 702-03, para. 9 (Enf. Bur. 2003); *Northeast Utilities*, 17 FCC Rcd 4115, 4117, para. 13 (Enf. Bur. 2002).

and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Delta willfully and repeatedly violated Sections 11.35(a) and 73.49 of the Rules and find that, although cancellation of the proposed monetary forfeiture is not warranted, reduction of the forfeiture amount to \$12,000 is appropriate based on Delta's past history of compliance with the Rules.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,¹⁶ Delta Radio Greenville, LLC **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twelve thousand dollars (\$12,000) for willfully and repeatedly violating Sections 11.35(a) and 73.49 of the Rules.

12. 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.¹⁷ Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. The payment should note NAL/Acct. No. 200432620005, and FRN 0007689243. 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. 20554.¹⁸

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Larry G. Fuss, President, Delta Radio, LLC, 9408 Grand Gate Street, Las Vegas, NV 89143.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau

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

¹⁷47 U.S.C. § 504(a).

¹⁸See 47 C.F.R. § 1.1914.