

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

In the Matter of)	
)	File No. EB-02-OR-387
Jesse C. Ross and Ernestine A. Ross)	
Licensee of Station WSAO(AM) and)	NAL/Acct. No. 200332620013
Owner of Antenna Structure at N34 36' 56")	
W089 56' 09")	FRN: 0008-2084-15
Senatobia, Mississippi)	

FORFEITURE ORDER

Adopted: October 19, 2004

Released: October 22, 2004

By the Assistant Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of twenty-one thousand dollars (\$21,000) to Jesse C. Ross and Ernestine A. Ross, (“Ross”), the licensee of AM radio station WSAO, Senatobia, Mississippi and owner of the antenna structure at North 34 36’ 56” latitude, West 089 56’ 09” longitude, for willful and repeated violation of Section 17.4(a) of the Commission’s Rules (“Rules”) and willful violation of Sections 11.35(a) and 73.3526(c)(1) of the Rules.¹ The noted violations involve Ross’s failure to register its antenna structure for radio station WSAO, failure to maintain operational Emergency Alert System (“EAS”) equipment, and failure to make available all required public file documents during regular business hours.

2. On March 18, 2003, the Commission’s New Orleans, Louisiana District Office (“New Orleans Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Ross for a forfeiture in the amount of twenty-one thousand dollars (\$21,000).² Ross filed a response to the *NAL* on April 1, 2003.

II. BACKGROUND

3. On November 20, 2002, an agent from the New Orleans Office inspected WSAO. At the time of the inspection, the station’s EAS equipment was not functioning because the encoder/decoder unit was not connected to any operating receivers that would have monitored incoming alert signals and tests. Station personnel were unable to produce any logs of EAS tests sent and received, or any notation that the unit had been removed from service. In addition, the station’s antenna structure, which is 205 feet in height, had no registration number displayed at the base of the structure. The agent found no Commission records that the antenna structure had been registered, and station personnel could provide no evidence of an attempt to register the structure. The licensee later acknowledged to the agent that it owned the antenna structure. Finally, a box of loose papers was presented to the agent as comprising the station’s public inspection file. The box contained only the station’s contour map and licensee renewal

¹ 47 C.F.R. §§ 17.4(a), 11.35(a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332620013 (Enf. Bur., New Orleans Office, released March 18, 2003).

information.

4. On March 18, 2003, the New Orleans Office issued the subject *NAL* to Ross for twenty-one thousand dollars (\$21,000) for apparent willful and repeated violation of Sections 17.4(a) of the Rules and willful violation of Sections 11.35(a) and 73.3526(c)(1) of the Rules.³ Ross responded to the *NAL* stating that the registration number is on the tower construction permit of its license, BP830324AF. Ross further states that the public inspection file had only been misplaced and that the licensee is now in the process of refilling and cleaning up the files in accordance with Section 73.3526(c)(1) of the Rules. Finally, Ross states that a new EAS Encoder/Decoder has been ordered and will be installed, made operational, and proper logs kept of its use.

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”),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 Ross’ 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.⁶

6. Section 11.35(a) of the Rules requires that broadcast stations be responsible for ensuring that EAS Encoders, EAS Decoders, and Attention Signal generating and receiving equipment used as part of the EAS are installed such that monitoring and transmitting functions are available during the times that the stations are in operation. On November 20, 2002, Ross’s EAS equipment for WSAO was not operational, because the encoder/decoder was not attached to operating receivers in order to monitor for alerts.⁷ Ross does not contest the violation and states that new EAS equipment has been ordered and that it will install and properly use the equipment, and log EAS tests as required in the future. The Commission has consistently found that while commendable, “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 Accordingly, we conclude that Ross willfully⁹ violated Section 11.35(a) of the Rules.

7. Section 17.4(a) of the Rules states that as of July 1, 1996, the owner of an antenna structure that requires notice of proposed construction to the Federal Aviation Administration (“FAA”),

³ 47 C.F.R. § 73.3526(c)(1).

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ Moreover, there were no entries in the station’s log to indicate any problem or malfunction of the EAS equipment, as required by 47 C.F.R. § 11.35(b).

⁸ *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994); *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002).

⁹ 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” *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

must also register the structure with the Commission.¹⁰ Ross concedes that it is the owner of this antenna structure. Ross's antenna structure requires notice to the FAA, and thus Commission registration, because the structure's height exceeded 200 feet. In its response, Ross states that the registration number was on the tower construction permit. However, this is not the case. The number Ross provided is the file number of its construction permit. An antenna tower is not automatically registered with the Commission when the owner files an application for a construction permit. Rather, the owner must file FCC Form 854 or complete the online filing process available from the Commission's web site.¹¹ Even if, *arguendo*, Ross was unaware of the Commission's Rules regarding the correct method for registering the antenna structure, it is well established that mistake or inadvertence resulting in a rule violation is considered a willful violation of the Commission's Rules.¹² Because Ross' tower has been unregistered from July 1, 1996 to the present date, we conclude that Ross has willfully and repeatedly¹³ violated Section 17.4(a) of the Rules.

8. Section 73.3526(c)(1) of the Rules requires that a station's public inspection file be available for inspection at any time during regular business hours. During regular business hours on November 20, 2002, papers identified by station personnel as the station's public inspection file contained only two of the required items: the contour map for Station WSAO and the Ross's most recent license renewal. In its response, Ross personally attests that its public inspection file had been misplaced and is now being re-filed. However, as noted above, corrective action taken to come into compliance with Commission rules does not nullify or mitigate any prior forfeitures or violations.¹⁴ The public inspection files were not available as required at the time of inspection. Accordingly, we find that Ross willfully violated Section 73.3526(c)(1) of the Rules, and conclude that later correction of the public inspection file status does not mitigate the proposed forfeiture.

9. Ross's response states that it plans to take the steps necessary to comply with our EAS and public file rules. However, as of the adoption date of this *Order*, it has not provided evidence of compliance with these rules. Additionally, as stated above, a search of the Commission's ASR database reveals that as of the adoption date of this *Order*, Ross still had not registered its antenna structure with the Commission. Accordingly, we will require, pursuant to Section 308(b) of the Act,¹⁵ that Ross submit a report to the Enforcement Bureau within 30 days of the release date of this *Order* demonstrating that it is in compliance with our EAS, antenna registration and public file rules as required by Sections 11.35(a), 17.4(a) and 73.3526(c)(1) of the Rules. Ross's report must be submitted in the form of an affidavit or declaration, under penalty of perjury, and signed by an officer or director of the licensee. Ross should note that its continued noncompliance could result in additional enforcement action.

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

¹⁰ 47 C.F.R. § 17.7(a).

¹¹ <<http://wireless.fcc.gov/antenna/>>.

¹² *Southern California Broadcasting Company*, 6 FCC Rcd. 4387 (1991)(citing *Vernon Broadcasting, Inc.*, 60 RR2d 1275, 1277 (1986); *Fay Neel Eggleston*, 19 FCC2d 829 (1969)). See also *PBJ Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992); *Standard Communications Corp.*, 1 FCC Rcd 358 (1986); *Triad Broadcasting Co., Inc.*, 96 FCC 2d 1235, 1242 (1984).

¹³ As provided by 47 U.S.C. § 312(f)(2), "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, 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). *Southern California Broadcasting Co., supra*.

¹⁴ See note 8, *infra*.

¹⁵ 47 U.S.C. § 308(b).

and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Ross willfully violated Sections 11.35(a) and 73.3526(c)(1) of the Rules, and that it willfully and repeatedly violated Section 17.4 of the Rules, and we find no grounds to reduce or cancel the forfeiture amount proposed in the *NAL*.

IV. ORDERING CLAUSES

11. 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,¹⁶ Jesse C. Ross and Ernestine A. Ross, licensee of Station WSAO(AM), in Senatobia, Mississippi, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twenty-one thousand dollars (\$21,000) for its willful and repeated violation of Sections 17.4 of the Rules, and willful violation of Sections 73.3526(c)(1), and 11.35(a) of the Rules.

12. **IT IS FURTHER ORDERED** that, pursuant to Section 308(b) of the Act, Jesse C. Ross and Ernestine A. Ross must submit the report described in paragraph nine (9) above no later than thirty (30) days from the release date of this *Order* to: Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Washington, D.C. 20554, Attention: Susan Magnotti, Esquire.

13. 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 of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. 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. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁸

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Jesse C. Ross and Ernestine A. Ross, Northwest Mississippi Broadcasting Company, P.O. Box 190, Senatobia, Mississippi 38668.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau

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

¹⁷ 47 U.S.C. § 504(a).

¹⁸ See 47 C.F.R. § 1.1914.