

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

In the Matter of	)	
	)	File No. EB-02-SD-144
Aracelis Ortiz, Executrix	)	
for the Estate of Carlos Ortiz	)	NAL/Acct. No. 200232940008
Harlingen, Texas	)	
	)	FRN 0003-7552-87
	)	

**FORFEITURE ORDER**

**Adopted: February 20, 2004**

**Released: February 23, 2004**

By the 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 Aracelis Ortiz, Executrix for the Estate of Carlos Ortiz (“Aracelis Ortiz”), licensee of Class A Television Broadcast station KCOS-LP, Phoenix, Arizona, for willfully violating Sections 73.1125(c) and 11.35(a) of the Commission’s Rules (“Rules”).<sup>1</sup> The noted violations involve Aracelis Ortiz’s failure to ensure that required Emergency Alert System (“EAS”) equipment was operational at station KCOS-LP and Mrs. Ortiz’s failure to have a main studio at a location within KCOS-LP’s predicted Grade B contour on June 25, 2002.

2. On September 30, 2002, the District Director of the Commission's San Diego, California Field Office ("San Diego Office") issued a *Notice of Apparent Liability for Forfeiture* ("*NAL*")<sup>2</sup> in the amount of fifteen thousand dollars (\$15,000) to Aracelis Ortiz. After receiving an extension of time within which to respond to the *NAL*, Mrs. Ortiz filed a response on November 18, 2002.

**II. BACKGROUND**

3. On May 6, 2002, an agent from the Commission’s San Diego Office attempted to conduct a routine inspection of KCOS-LP’s EAS equipment. The agent discovered that there was neither a studio address nor a telephone listing for station KCOS-LP in any of the telephone directories for the Phoenix area. However, the transmitter for Station KCOS-LP was operating on TV channel 28.

<sup>1</sup> 47 C.F.R. §§ 73.1125(c) and 11.35(a).

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232940008 (Enf. Bur., San Diego, September 30, 2002).

4. On May 9, 2002, an agent from the San Diego Office telephoned the licensee in Harlingen, Texas to obtain a studio address and telephone number for KCOS-LP. No one knowledgeable about KCOS-LP was available at that time. On May 10, 2002, the District Director of the San Diego Office sent a Letter of Inquiry to Mrs. Ortiz requesting a contact person in the Phoenix area responsible for KCOS-LP, the address of the local studio, and a local telephone number for the station. The San Diego Office received a fax reply to the Letter of Inquiry on May 20, 2002. The fax gave a telephone number for station KCOS-LP, however, when called, a recording indicated that the telephone number had been disconnected. The fax also indicated that the studio address for station KCOS-LP was 6750 E. Main Street, Suite 106, Mesa, Arizona.

5. On June 24, 2002, an agent from the San Diego Office visited the studio address provided in the May 20, 2002 fax. The agent found no studio for KCOS-LP at that address. However, he found that the transmitter site management company was located at this address. Employees of the transmitter site management company provided a Phoenix area telephone number for KCOS-LP.

6. On June 25, 2002, using the telephone number provided by the site management company, the agent reached Mr. Thomas Northcross, station manager for KCOS-LP. Mr. Northcross stated that KCOS-LP did not have a studio in operation at that time, but that one was under construction at 3820 E. Main St., Suite 10, Mesa, Arizona. He also stated that KCOS-LP was operating as a Low Power TV station and did not originate any programming, as it was rebroadcasting programs received by an earth station at the transmitter site. Mr. Northcross also stated that KCOS-LP did not have any EAS equipment installed at that time but that the equipment would be installed when the studio was completed.

7. On September 30, 2002, the District Director of the San Diego Office issued a *NAL* to Aracelis Ortiz for violating Sections 73.1125(c) and 11.35(a) of the Rules. On November 18, 2002, Aracelis Ortiz filed a response to the *NAL*. In her response, Mrs. Ortiz informs the Commission that she is the licensee of station KCOS-LP, not because she is experienced in the operation of broadcast stations, but because she is the Executrix of her late husband's estate and he was the licensee of the station. Further, Mrs. Ortiz asserts that the allegations in the *NAL*, that station KCOS-LP did not have a main studio and that it did not have EAS equipment are not based on a physical inspection of KCOS-LP, but on a telephone conversation between an FCC agent and Mr. Thomas Northcross, then station manager of KCOS-LP. In addition, Mrs. Ortiz states that the Enforcement Bureau did not issue her a Notice of Violation ("NOV") prior to issuing the *NAL*, with an opportunity to comment on the alleged rule violations. Specifically regarding the main studio violation, Mrs. Ortiz states that she executed a lease on June 2, 2002 for space to use as a main studio at 3820 E. Main Street, Mesa, Arizona. Mrs. Ortiz claims to have accepted the space "as is," occupied it and commenced construction of an office and studio immediately, and further states that on June 25, 2002, the studio was under construction.<sup>3</sup> Mrs. Ortiz states that Mr. Northcross was in Phoenix to obtain programming commitments and because she sought to comply with the FCC's requirement to maintain and staff a main studio. Finally, Mrs. Ortiz argues that Section 73.1125(c) of the Rules, which requires a Class A low power licensee to maintain a main studio within its Grade B contour, does not require the main studio to be operational 24 hours per day, 365 days per year. Mrs. Ortiz claims to have been in substantial compliance with the main studio rule.

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<sup>3</sup> According to the response filed by Mrs. Ortiz, the main studio is now completed and is fully functional.

8. Regarding the EAS violation, Mrs. Ortiz states that on January 10, 2001, EAS equipment was ordered for several Class A low power stations licensed to Carlos Ortiz or Ortiz Broadcasting Company. Mrs. Ortiz includes a copy of an invoice dated January 9, 2001 which shows five EAS-TV with character generators and ten modified MTA-16 AM/FM receivers having been ordered. Also included is a copy of a cancelled check for payment of the invoice which is dated April 22, 2002. Mrs. Ortiz claims that, although payment was made more than two months before the inspection, on the date of inspection, the EAS equipment still had not been delivered. Mrs. Ortiz asserts that she made a good faith effort to comply with the EAS rule and should not be penalized for the equipment vendor's inability to make timely delivery.

### III. DISCUSSION

9. The proposed forfeiture amount in this case is being assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> 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 Aracelis Ortiz'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.<sup>6</sup>

10. Section 73.1125(c) of the Rules provides that each Class A Television station shall maintain a main studio within the station's predicted Grade B contour. There was no main studio located at 6750 East Main Street, Suite 106, Mesa, Arizona, the first address provided as the main studio for station KCOS-LP. We know this because agents from the San Diego Office attempted to inspect the station at that address on June 24, 2002. This fact was further confirmed by the telephone conversation with Mr. Northcross, the station manager, on June 25, 2002, when he stated that KCOS-LP did not have a main studio in operation at that time, but one was under construction at 3820 East Main Street, Suite 10, Mesa, Arizona. Moreover, the agents' inability to find a telephone number or studio address in any telephone directory for the Phoenix area for station KCOS-LP, beginning on May 6, 2002, is a further indication that station KCOS-LP did not have a main studio. Finally, Aracelis Ortiz confirmed that there was no main studio for station KCOS-LP in her response to the *NAL* when she stated that the main studio was "under construction and had not been completed." There is no indication in the response that any of the activities normally associated with a main studio were being conducted from the alleged main studio that was under construction at 3820 East Main Street. Although Mrs. Ortiz claims that Mr. Northcross was in the Phoenix area to obtain programming commitments and because she was aware of the FCC's main studio staffing requirements, we note that the cited violation was failure to have a main studio at all, not failure to maintain appropriate studio staffing. We find that Aracelis Ortiz willfully<sup>7</sup> violated Section

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<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

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

<sup>7</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

73.1125(c) of the Rules by failing to have a main studio within KCOS-LP's predicted Grade B contour. However, we note that Mrs. Ortiz did enter into a lease on June 2, 2002 (prior to the inspection) for real property located at 3820 E. Main Street, Suite 10, Mesa, Arizona, to be used and occupied as a "television network." Mrs. Ortiz's execution of a lease for a main studio is evidence of her good faith intention to comply with Section 73.1125(c) of the Rules.<sup>8</sup> Therefore, we will reduce the base forfeiture amount of \$7,000 assessable for the Section 73.1125(c) violation to \$5,600.

11. Section 11.35(a) of the Rules provides that broadcast stations, which include Class A television stations,<sup>9</sup> 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 station and systems are in operation. Because Aracelis Ortiz did not have EAS equipment installed at station KCOS-LP on June 25, 2002, we find that she willfully violated Section 11.35(a) of the Rules. However, Mrs. Ortiz has established that she had ordered and paid for EAS equipment for station KCOS-LP at least two months before the date of the attempted inspection, even though the equipment had not been delivered by that date. Although we do not believe that Mrs. Ortiz's efforts to comply with the EAS rules are sufficient to justify canceling the forfeiture, we do believe that those same efforts merit a reduction of the proposed forfeiture. We therefore reduce the base forfeiture amount attributable to the EAS violation from \$8,000 to \$6,400 based on Mrs. Ortiz's good faith efforts to comply with Section 11.35(a) of the Rules prior to being informed of the violation.<sup>10</sup>

12. As for Mrs. Ortiz's remaining arguments, we note that Mrs. Ortiz is now the licensee of KCOS-LP as a result of her husband's death. However, we also note that Mrs. Ortiz had two years between the dates of Mr. Ortiz's death on August 5, 2000 and the issuance of the *NAL* on September 30, 2002 to become knowledgeable about her responsibilities as a broadcaster. Licensees are expected to know and comply with the Commission's rules.<sup>11</sup> Mrs. Ortiz's assertion that the allegation that KCOS-LP did not have a main studio is not based on a physical inspection but on a phone conversation with then station manager Thomas Northcross is without merit. On June 24, 2002, an agent from the San Diego Office went to 6750 E. Main Street, Suite 106, Mesa, Arizona, the studio address provided in response to a Letter of Inquiry to Aracelis Ortiz. The agent found no studio for KCOS-LP at that address. What the agent did find there was the transmitter site management company. The agent's inability to find a main studio at the address provided led to his first hand determination that there was no main studio for KCOS-

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regulation of the Commission authorized by this Act ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>8</sup> See *A-O Broadcasting Corporation*, FCC 03-322 (December 29, 2003) (licensee granted good faith reduction for starting construction on its main studio prior to inspection).

<sup>9</sup> See 47 C.F.R. § 11.11.

<sup>10</sup> See *Access.I Communications Corp. – NY*, DA 03-3412 (Enf. Bur., October 30, 2003) (good faith reduction given where tower owner identified the need to repaint the tower, scheduled the tower for repainting, and repainted the tower prior to any notice of inspections or issuance of the *NAL*).

<sup>11</sup> See, e.g. *Monroe Area Broadcasters, Inc.*, 18 FCC Rcd 6255 (Enf. Bur. 2003).

LP at that location. The agent's determination was subsequently confirmed by the conversation with Thomas Northcross, in which he stated that KCOS-LP did not have a main studio in operation at that time. Further, although Mrs. Ortiz claims to have been in substantial compliance with the main studio rule, we look to licensees to be in full compliance with the rules, not merely substantial compliance. Moreover, we have already acknowledged Mrs. Ortiz's good faith efforts to comply with the main studio rule and reduced the forfeiture accordingly. Finally, Mrs. Ortiz asserts that the Bureau did not issue her a NOV prior to issuing the *NAL*, with an opportunity to comment on the alleged rule violations. However, nothing in the Communications Act or the Commission's Rules requires the issuance of an NOV prior to the issuance of an *NAL*.<sup>12</sup> Consistent with Section 1.80(f)(3),<sup>13</sup> Mrs. Ortiz was afforded 30 days within which to respond to the *NAL* (plus an extension of time), and she did respond. Mrs. Ortiz was not deprived of an opportunity to be heard on the matter of the violations.

13. There is no evidence that Aracelis Ortiz is currently in compliance with Section 11.35(a) of the Rules with respect to the EAS violation. Accordingly, we will require, pursuant to Section 308(b) of the Act,<sup>14</sup> that Aracelis Ortiz report to the Enforcement Bureau no more than thirty (30) days following the release of this *Order* how she has achieved compliance with Section 11.35(a) of the Rules. The report must be submitted in the form of an affidavit signed by Aracelis Ortiz.

#### IV. ORDERING CLAUSES

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,<sup>15</sup> Aracelis Ortiz **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twelve thousand dollars (\$12,000) for willfully violating Sections 73.1125(c) and 11.35(a) of the Rules.

15. **IT IS FURTHER ORDERED** that, pursuant to Section 308(b) of the Act, Aracelis Ortiz must submit the report described in Paragraph 13, above, within no more than thirty (30) days following the release of this *Order*, to Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Room 7-A728, Washington, D.C. 20554, Attention: Jacqueline Ellington, Esq.

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.<sup>16</sup> 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. 200232940008, and FRN 0003-

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<sup>12</sup> See *AT&T Wireless Services, Inc.*, 17 FCC Rcd 7891, 7895 (2002).

<sup>13</sup> 47 C.F.R. § 1.80(f)(3).

<sup>14</sup> 47 U.S.C. § 308(b).

<sup>15</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>16</sup> 47 U.S.C. § 504(a).

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7552-87. 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.<sup>17</sup>

17. **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 Aracelis Ortiz, Executrix of the Estate of Carlos Ortiz, P.O. Box 530391, Harlingen, Texas 78553.

**FEDERAL COMMUNICATIONS COMMISSION**

David H. Solomon  
Chief, Enforcement Bureau

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<sup>17</sup> See 47 C.F.R. § 1.1914.