

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

In the Matter of)	File Number: EB-05-SD-072
)	
Farmworkers Educational Radio Network, Inc.)	NAL/Acct. No.: 200532940003
)	FRN: 0010057685
Licensee of Station KCEC-FM)	
Wellton, Arizona)	
Facility ID #21207)	

FORFEITURE ORDER

Adopted: June 27, 2006

Released: June 29, 2006

By the Regional Director, Western Region, 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 Farmworkers Educational Radio Network, Inc. (“Farmworkers”), the licensee of FM Broadcast Radio station KCEC-FM in Wellton, Arizona, for repeatedly violating Section 11.35 of the Commission’s Rules (“Rules”).¹ On July 20, 2005, the Enforcement Bureau’s San Diego Office issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Farmworkers for failing to ensure the operational readiness of KCEC-FM’s Emergency Alert System (“EAS”) equipment. In this *Order*, we consider Farmworkers’ arguments that the EAS transmission equipment was fully operational, and that the proposed forfeiture should be cancelled or reduced.

II. BACKGROUND

2. On April 8, 2005, an agent from the Commission’s San Diego Office conducted an inspection at the main studio of KCEC-FM located at 670 E. 32nd Street, Suite 12A, Yuma, Arizona. Although EAS equipment was installed, the agent found that it was not operational at the time of inspection. No audio from the EAS receiver for the designated first and second local primary stations (“LP-1” and “LP-2”) could be heard.² At the request of the agent, the designated LP-1 and LP-2 stations ran a required weekly test (“RWT”) during this inspection and the station’s EAS equipment did not detect the activation. A review of the EAS log and printouts generated by the EAS encoder/decoder indicated that from January 2004 through April 2005, only four monthly tests (“RMT”) were received from the local primary stations and none of these tests were retransmitted. EAS logs also indicated that numerous RWTs were not transmitted by KCEC-FM and numerous RWTs were not received from either designated LP-1 or LP-2 stations during this same period. No entries were made by KCEC-FM staff in the EAS log to identify the causes of these failures or what steps were taken to remedy any failures.

3. On April 22, 2005, the San Diego agent spoke with KCEC-FM’s Chief Engineer. The Chief Engineer acknowledged that problems were found with the EAS equipment during the engineer’s

¹ 47 C.F.R. § 11.35.

² We note that in the *NAL*, the San Diego Office indicated multiple receivers were part of the system, one to receive the LP-1 and one to receive the LP-2. In its *Response*, Farmworkers indicates that only one receiver, an “EAS 930A Multi-Module Receiver,” was part of the EAS system.

inspection of the station's EAS equipment on April 9, 2005. Specifically, he indicated that the EAS equipment was originally set for the automatic mode to receive and to forward the information received for the tests from the local primary stations. However, the EAS equipment was switched to the manual mode, requiring a staff person to manually resend the RMT. Also, the Chief Engineer indicated that the EAS receiver was not connected properly to a power source which explained why the tests sent by the LP-1 and LP-2 had not been received by KCEC-FM.

4. On July 20, 2005, the Enforcement Bureau's San Diego Office issued a *NAL* in the amount of \$8,000 to Farmworkers.³ In the *NAL*, the San Diego Office found that Farmworkers apparently repeatedly violated Section 11.35 of the Rules,⁴ by failing to ensure the operational readiness of KCEC-FM's EAS equipment. Farmworkers filed a response on August 22, 2005 ("*Response*"). In its *Response*, Farmworkers argues that the San Diego agent found overall compliance with the Commission's Rules, and that the only violations discovered concerned the EAS equipment and logging. While Farmworkers acknowledges lapses in the station's EAS monitoring and logging, it contends that KCEC-FM made a conscientious effort to comply with the EAS Rules; that the EAS transmission equipment was at all times fully operational; that the station had most of the required logging slips; and that if someone had not "jostled loose" the plug on the EAS receiver, the station would have been in full compliance.

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁵ Section 1.80 of the Rules,⁶ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁷ In examining the *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.⁸

6. The Rules provide that every AM and FM broadcast station is part of the nationwide EAS network and is categorized as a participating national EAS source unless the station affirmatively requests authority to not participate.⁹ The EAS provides the President and state and local governments with the capability to provide immediate and emergency communications and information to the general public.¹⁰ State and local area plans identify local primary sources responsible for coordinating carriage of common emergency messages from sources such as the National Weather Service or local emergency management officials.¹¹ Required monthly and weekly tests originate from EAS Local or State Primary sources and

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532940003 (Enf. Bur., Western Region, San Diego Office, released July 20, 2005). We note that in the *NAL*, the San Diego Office inadvertently listed an incorrect Facility ID Number for KCEC-FM. The station's correct Facility ID Number is listed in the caption of this *Order*.

⁴ 47 C.F.R. § 11.35.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

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

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ 47 C.F.R. §§ 11.11 and 11.41.

¹⁰ 47 C.F.R. §§ 11.1 and 11.21.

¹¹ 47 C.F.R. § 11.18. State EAS plans contain guidelines that must be followed by broadcast and cable personnel, emergency officials and National Weather Service personnel to activate the EAS for state and local emergency alerts. The state plans include the EAS header codes and messages to be transmitted by the primary state, local and relay EAS

must be retransmitted by the participating station.

7. Section 11.35 of the Rules requires all broadcast stations to ensure that EAS encoders, EAS decoders and attention signal generating and receiving equipment is installed and operational so that the monitoring and transmitting functions are available during the times the station is in operation. Broadcast stations must also determine the cause of any failure to receive required monthly and weekly EAS tests, and must indicate in the station's log why any required tests were not received and when defective equipment is removed and restored to service.¹²

8. Section 11.61(a)(1) and (2) of the Rules requires broadcast stations to (a) receive monthly EAS tests from designated local primary EAS sources and retransmit the monthly test within 60 minutes of its receipt and (b) conduct tests of the EAS header and EOM codes at least once a week at random days and times.¹³ The requirement that stations monitor, receive and retransmit the required EAS tests ensures the operational integrity of the EAS system in the event of an actual disaster. Appropriate entries must be made in the broadcast station log as specified in Sections 73.1820 and 73.1840, indicating reasons why any tests were not received or transmitted.¹⁴

9. Farmworkers argues that the EAS transmission equipment was fully operational at all times, that the EAS equipment had transmitted the RWT's in automatic mode, and that whether the equipment was in automatic or manual mode had no bearing on the transmission by the station of the self-generated RWT. Farmworkers supports this argument by attaching an affidavit from the KCEC-FM Chief Engineer who describes in detail how the KCEC-FM EAS equipment was set up to automatically transmit the RWT's. While we do not dispute the statements made concerning the transmission of the RWT's, we note that neither the *Response* nor the affidavit contain any evidence to refute the San Diego Office's finding that no audio from the RWT's transmitted by the LP-1 and LP-2, at the request of the San Diego agent, could be heard from the station's EAS receiver. Farmworkers, and the Chief Engineer, acknowledge that the EAS receiver was not plugged in, and the Chief Engineer acknowledges that only after he restored power to the EAS receiver did the lights indicating audio on the receiver's front panel as well as on the encoder/decoder light up. While Farmworkers admits that the receiver's plug had been "jostled loose" at some point in time prior to the inspection by the San Diego agent, we note that no one in the KCEC-FM studio noticed the EAS receiver's failure until the inspection. KCEC-FM's lack of operational readiness concerning its EAS equipment was also exemplified by the fact that the staff was unable to run a RWT without contacting the station's Chief Engineer.

10. Farmworkers also argues that while there were lapses in KCEC-FM's EAS monitoring and logging, the station had most of the required logging slips. We disagree. The San Diego agent conducted a comprehensive review of the EAS logs and printouts generated by the KCEC-FM EAS encoder/decoder from January 2004 through April 2005, and found that only four RMT's were received from the LP-1 and LP-2 and none of these tests were retransmitted. Additionally, the station logs contained no entries indicating why tests were not received or transmitted. Farmworkers provides no evidence to dispute this finding.

11. Farmworkers acknowledges the failure of the EAS receiver but asserts that the failure

sources.

¹² 47 C.F.R. § 11.35(a) and (b).

¹³ The required monthly and weekly tests are required to conform to the procedures in the EAS Operational Handbook. *See also, Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, EB Docket No. 01-66, *Report and Order*, FCC 02-64 (Feb. 26, 2002); 67 Fed Reg 18502 (April 16, 2002) (effective May 16, 2002, the required monthly EAS test must be retransmitted within 60 minutes of receipt).

¹⁴ 47 C.F.R. §§ 73.1820 and 73.1840.

was a minor violation. Again, we disagree. The failure of the receiver resulted in a failure of the KCEC-FM EAS system. If the EAS receiver is unable to receive the signals from the LP-1 and LP-2, it is unable to receive the RMT's sent by those stations and, consequently, is unable to retransmit those RMT's, as required by the Rules. In the case of an actual emergency, KCEC-FM would have been unable to receive or retransmit emergency communications from the President, or state or local governments, because KCEC-FM was unable to receive the LP-1 and LP-2. Contrary to Farmworkers' assertions, we do not find such a situation to be a minor violation. The requirement that stations monitor, receive and retransmit the required EAS tests, particularly the RMT's, ensures the operational integrity of the EAS system in the event of an actual emergency.

12. Farmworkers also argues that the forfeiture amount should be reduced because the agent found overall compliance with the Commission's Rules, and because KCEC-FM has an overall history of compliance with the Rules. In 2005, however, Farmworkers was assessed a \$7,000 forfeiture for willful and repeated violation of Section 73.1125 of the Rules.¹⁵ Because Farmworkers was previously the subject of an enforcement action, we find Farmworkers does not have an overall history of compliance and that reduction of the assessed forfeiture amount is not warranted.¹⁶

13. Farmworkers also seeks a reduction based on its good faith and voluntary disclosure of the facts and circumstances in this case. A good faith reduction is permissible when a licensee notices a violation and attempts to remedy it before the Commission conducts its inspection, or, it provides evidence of an established compliance program in place, prior to the Commission's involvement.¹⁷ Farmworkers meets neither standard. Additionally, Farmworkers only made disclosures to the San Diego agent once the agent had begun the inspection and therefore is not entitled to a reduction for voluntarily disclosing violations prior to a Commission inspection.¹⁸

14. We have examined the *Response* to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Farmworkers repeatedly violated Section 11.35 of the Rules, by failing to ensure the operational readiness of the EAS equipment at KCEC-FM.¹⁹ Considering the entire record and the factors listed above, we find that neither reduction nor cancellation of the proposed \$8,000 forfeiture is warranted.

IV. ORDERING CLAUSES

15. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Farmworkers Educational Radio Network, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$8,000 for repeatedly violating Section 11.35 of the Rules.²⁰

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

¹⁵ See *Farmworker Educational Radio Network – Licensee of FM Station KRIT*, Forfeiture Order, DA 05-729, 2005 WL 2180500 (rel. September 8, 2005).

¹⁶ See, e.g., *Petracom of Texarkana*, 19 FCC Rcd 8096 (EB 2004).

¹⁷ See *Aquila, Inc.*, 19 FCC Rcd 22507 (EB 2004).

¹⁸ See *MAPA Broadcasting, L.L.C. WSLA(AM)*, 17 FCC Rcd 10519 (EB 2002).

¹⁹ 47 C.F.R. § 11.35.

²⁰ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 11.35.

Act.²¹ 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 Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911- 6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.²²

17. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Farmworkers Educational Radio Network, Inc. at its address of record, and its counsel of record, Anne Thomas Paxson, Esquire, Borsari and Paxson.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

²¹ 47 U.S.C. § 504(a).

²² See 47 C.F.R. § 1.1914.