

general manager told the agent that KSWG(FM) did not have any agreement with KBSZ(AM) to continue sharing EAS equipment since KBSZ(AM) was sold to the Petersons in 2001. The general manager also told the agent that he was not aware that KSWG(FM) continued to share its EAS equipment with KBSZ(AM) and stated he would have this practice discontinued.

4. On August 19, 2005, the San Diego agent spoke with KBSZ(AM)'s contract engineer. The engineer acknowledged that he had advised the Petersons that EAS equipment should be installed at the KBSZ(AM) studio. The engineer also told the agent that he was advised by Mr. Peterson that KBSZ(AM) was sharing EAS equipment with KSWG(FM) and that all the required EAS tests were being received and transmitted via KSWG(FM).

5. A review of the Commission's records shows that Circle S is the current licensee of KSWG(FM). Circle S was the licensee of KBSZ(AM) until July 16, 1997, when the KBSZ(AM) license was assigned to SBD Broadcasting, Inc. ("SBD").³ On July 9, 2001, the KBSZ(AM) license was assigned from SBD to the Petersons.⁴

6. On November 18, 2005, the Enforcement Bureau's San Diego Office issued a *NAL* in the amount of \$8,000 to the Petersons.⁵ In the *NAL*, the San Diego Office found that the Petersons apparently willfully and repeatedly violated Section 11.35 of the Rules,⁶ by failing to ensure the operational readiness of KBSZ(AM)'s EAS equipment. The Petersons filed a response on December 19, 2005 ("*Response*"). In their *Response*, the Petersons state that throughout the tenure of their ownership of KBSZ(AM), and when the station was owned by the preceding licensee, EAS tests were conducted by KBSZ(AM) by placing a call to KSWG(FM). The Petersons assert that while they were aware of the requirement to have separate EAS equipment for KBSZ(AM), the method they were using was in "technical compliance" with the Commission's EAS Rules. The Petersons also assert that KBSZ(AM) is a small station serving a small community, but that they have served that community well and have met their public interest obligations. Additionally, the Petersons state that the state-wide EAS system has been used infrequently, and that this infrequent use does not support the severity of the proposed forfeiture. Finally, the Petersons state that since the *NAL* was released, they have purchased and installed EAS equipment for KBSZ(AM).

III. DISCUSSION

7. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁷ Section 1.80 of the Rules,⁸ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁹ 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.¹⁰

³ See File No. BAPL-19970602GE, granted July 16, 1997.

⁴ See File No. BAL-20010525ABU, granted July 9, 2001.

⁵ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200632940001 (Enf. Bur., Western Region, San Diego Office, released November 18, 2005).

⁶ 47 C.F.R. § 11.35.

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. § 1.80.

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

¹⁰ 47 U.S.C. § 503(b)(2)(D).

8. 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.¹¹ 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.¹² 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.¹³ Required monthly and weekly tests originate from EAS Local or State Primary sources and must be retransmitted by the participating station.

9. 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.¹⁴

10. 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.¹⁵ 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.¹⁶

11. The Petersons argue that their method sharing of EAS equipment, and running EAS tests, with a station which was previously co-owned with KBSZ(AM) was in "technical compliance" with the Commission's EAS Rules. This is incorrect. As the San Diego Office correctly stated in the *NAL*, Section 11.51(j) of the Rules allows broadcast stations that are co-owned and co-located with a combined studio or control facility to provide EAS for the combined stations with one EAS encoder.¹⁷ Section 11.51(j), however, does not contemplate stations that are co-located, but not co-owned, sharing EAS equipment.¹⁸ In the present case, KBSZ(AM) and KSWG(FM) are neither co-owned nor co-located. Therefore, KBSZ(AM) is not in compliance with the Commission's EAS Rules. Additionally, KSWG(FM) personnel deny knowledge of the KBSZ(AM) EAS arrangement, demonstrating that KBSZ(AM) has no ability to control the EAS equipment at issue here, or to ensure its operational

¹¹ 47 C.F.R. §§ 11.11 and 11.41.

¹² 47 C.F.R. §§ 11.1 and 11.21.

¹³ 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 sources.

¹⁴ 47 C.F.R. § 11.35(a) and (b).

¹⁵ 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*, 17 FCC Rcd 4055 (2002) (effective May 16, 2002, the required monthly EAS test must be retransmitted within 60 minutes of receipt).

¹⁶ 47 C.F.R. §§ 73.1820 and 73.1840.

¹⁷ 47 C.F.R. § 11.51(j).

¹⁸ *Hull Broadcasting, Inc.*, 19 FCC Rcd 16710 (EB 2004).

readiness. Consequently, we find no merit to this argument.

12. We also find no merit to the Peterson's assertion that the lack of state-wide activation of the EAS system justifies a lower forfeiture amount in this case. The Commission has determined that the base forfeiture for failing to ensure the operational readiness of EAS equipment is \$8,000, and has consistently imposed that forfeiture amount against licensees.¹⁹ While there are mitigating factors that we must take into account prior to imposing a forfeiture, as explained above, the frequency with which a state activates its EAS system is not one of them. Because the Commission does not require such mitigation, and, in fact, may find such mitigation in opposition to the purpose of the EAS Rules, we decline to mitigate the proposed forfeiture amount on that basis.

13. Also, while we applaud the Petersons' record of community service concerning KBSZ(AM), we find that it does not mitigate the forfeiture proposed here. As stated above, the purpose of the EAS system is to ensure that stations like KBSZ(AM) are able to receive and retransmit emergency communications from the President, or state or local governments, in the case of actual emergencies. This is one of the fundamental public service requirements placed on broadcast stations, and it is one that KBSZ(AM) did not comply with.

14. Finally, we also decline to mitigate the proposed forfeiture based on the Petersons' assertion that since the *NAL* was released, they have purchased and installed EAS equipment for KBSZ(AM). The Commission has consistently held that a licensee is expected to correct errors when they are brought to the licensee's attention and that such correction is not grounds for a downward adjustment in the forfeiture.²⁰

15. 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 the Petersons willfully and repeatedly violated Section 11.35 of the Rules, by failing to ensure the operational readiness of the EAS equipment at KBSZ(AM).²¹ 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

16. **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, Richard A. & Joann R. Peterson **ARE LIABLE FOR A MONETARY FORFEITURE** in the amount of \$8,000 for repeatedly violating Section 11.35 of the Rules.²²

17. 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.²³ 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

¹⁹ See, e.g., *Farmworkers Educational Radio Network, Inc.*, DA 06-1330, 2006 WL 1788513 (rel. June 29, 2006); *Rafael C. Guerrero*, 20 FCC Rcd 14389 (EB 2005).

²⁰ *AT&T Wireless Services, Inc.* 17 FCC Rcd 21866, 21871-76 (2002).

²¹ 47 C.F.R. § 11.35.

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

²³ 47 U.S.C. § 504(a).

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. 20554.²⁴

18. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Richard A. & Joann R. Peterson at their address of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

²⁴ See 47 C.F.R. § 1.1914.