

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

In the Matter of)	
)	File Number: EB-06-DL-095
Jerry Russell dba The Russell Company)	
)	NAL/Acct. No.: 200732500002
Licensee of Station KWRD)	
Henderson, Texas)	FRN: 0009607078
Facility ID # 71519)	

FORFEITURE ORDER

Adopted: January 3, 2007

Released: January 5, 2007

By the Regional Director, South Central 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 Jerry Russell dba The Russell Company (“Russell”), licensee of AM Broadcast Radio station KWRD, in Henderson, Texas for willful and repeated violation of Section 11.35(a) of the Commission’s Rules (“Rules”).¹ The noted violation involves Russell’s failure to ensure the operational readiness of station KWRD’s Emergency Alert System (“EAS”).

II. BACKGROUND

2. On June 7, 2006, an agent from the Commission’s Dallas Office of the Enforcement Bureau (“Dallas Office”) conducted an inspection at the main studio of station KWRD located in Henderson, Texas. No employees of Russell were present at the station. On January 31, 2006, Russell signed a Time Brokerage and Option Agreement (“Agreement”) with a third party (“Broker”). The Agreement allowed Broker to use the station’s facilities to broadcast programming at the station for up to 24 hours a day, seven days a week, but reserved two hours of programming each week for Russell. Broker and Broker’s staff were present during the inspection. Broker stated that the EAS equipment had not been operational for “quite awhile.” He further clarified that the EAS system had not been functional since he had been at the station; over three months. The agent observed that a red fault light was illuminated on the front panel of the EAS encoder/decoder. Additionally, the most recent station EAS log entry dated “6/23/05” simply stated “E.B.S. OK.”² No entries were made in the log by Russell or Broker staff to identify the date or cause of the EAS system failure, or the steps taken to remedy any failures.

3. On November 14, 2006, the Dallas Office issued a *Notice of Apparent Liability for Forfeiture* to Russell the amount of eight thousand dollars (\$8,000) for the apparent willful and repeated violation of Section 11.35(a) of the Rules.³ On December 15, 2006, Russell submitted a response to the *NAL* requesting a reduction or cancellation of the proposed forfeiture.

¹ 47 C.F.R. § 11.35(a).

² The Emergency Broadcast System (“EBS”) predates EAS.

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732500002 (Enf. Bur., Dallas Office, November 14, 2006) (“*NAL*”).

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the 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) ("*Forfeiture Policy Statement*"). In examining Russell'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

5. Section 11.35 of the Rules requires all broadcast stations to ensure that EAS encoders, EAS decoders and Attention Signal generating and receiving equipment are 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.⁷ On June 7, 2006, station KWRD's EAS encoder/decoder was not operational when the station was in operation. A red fault light was illuminated on the front panel of the EAS encoder/decoder. Broker, who was in charge of the station during the inspection, admitted that the EAS equipment had not worked since he arrived at the station. Broker did not know when the EAS equipment first became defective, but he did observe that it had been defective for over 90 days. The most recent EAS log entry for the station was dated 6/23/05, and there was no evidence that the equipment was operational after that date or that any required weekly or monthly EAS tests had been conducted after that date. There were also no log entries describing when the EAS equipment first became defective.

6. In its response, Russell argues that the violation was inadvertent and not willful. Russell does not dispute that its violation was repeated. Russell states the EAS system was operational and the EAS logs up to date on December 30, 2005, right before the Agreement went into effect. Russell asserts former employees had access to the station for three days as the Agreement was completed and states they may have removed equipment and materials, unbeknownst to it. Russell states it was not aware that the EAS unit was damaged until October 2006, because its employees and Broker failed to alert it of that fact. Russell does not present any facts that would warrant a reduction or cancellation of the forfeiture. The "Commission has long held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors,"⁸ and the Commission has "consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations."⁹ Pursuant to the Agreement, Broker's personnel were subject to

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ 47 C.F.R. § 11.35(a), (b).

⁸ *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863,-64, para. 7 (2002); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34 (1991)(holding that a company's reliance on an independent contractor to construct a tower in compliance of FCC rules does not excuse that company from a forfeiture); *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972) (holding a licensee responsible for violations of FCC rules despite its reliance on a consulting engineer); *Petracom of Joplin, L.L.C.*, 19 FCC Rcd 6248 (Enf. Bur. 2004) (holding a licensee liable for its employee's failure to conduct weekly EAS tests and to maintain the "issues/programs" list).

⁹ *American Paging, Inc. of Virginia*, Notice of Apparent Liability for Forfeiture, 12 FCC Rcd 10417, 10420, para. 11 (Enf. & Cons. Inf. Div., Wireless Tel. Bur. 1997) (quoting *Triad Broadcasting Company*, 96 FCC 2d 1235, 1244

the supervision of Russell's management personnel. Russell, as the licensee, is responsible for ensuring compliance with the Rules, and consciously allowed its employees and Broker to operate its radio station. Russell cannot absolve itself of liability by claiming it was unaware of the actions and inactions of those employees and Broker.

7. Based on the evidence before us, we find that Russell willfully¹⁰ and repeatedly¹¹ violated Section 11.35(a) of the Rules by failing to maintain operational EAS equipment. We have examined Russell's 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 find no basis to reduce the \$8,000 forfeiture proposed for this violation.

IV. ORDERING CLAUSES

8. 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, Jerry Russell dba The Russell Company **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand dollars (\$8,000) for violation of Section 11.35(a) of the Rules.¹²

9. 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.¹³ 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 plan¹⁴ should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.¹⁵

(1984).

¹⁰ 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" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹¹ The 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." 47 U.S.C. § 312(f)(2).

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

¹³ 47 U.S.C. § 504(a).

¹⁴ In its response to the *NAL*, Russell requested that the forfeiture be reduced and that it be permitted to pay the reduced forfeiture in installments. We do not reduce the forfeiture associated with the violation. Russell, however, may submit a request to pay the full amount of the forfeiture in installments with the Associate Managing Director.

¹⁵ See 47 C.F.R. § 1.1914.

10. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Jerry Russell dba The Russell Company at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau