

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

In the Matter of)	
)	
Omni Communications, Inc.)	EB-07-DL-075
)	
Licensee of Station KWOX)	NAL/Acct. No. 200732500006
Woodward, Oklahoma)	
Facility ID # 50332)	FRN: 0003752904
)	

FORFEITURE ORDER

Adopted: June 11, 2008

Released: June 13, 2008

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 Omni Communications, Inc. (“Omni”), licensee of station KWOX, in Woodward, Oklahoma, for willful and repeated violation of Section 11.35(a) of the Commission's Rules (“Rules”).¹ The noted violation involves Omni’s failure to ensure that Emergency Alert System (“EAS”) equipment was installed so that the monitoring and transmitting functions were available during the times the station was in operation.

II. BACKGROUND

2. On May 2, 2007, an agent from the Commission’s Dallas Office of the Enforcement Bureau (“Dallas Office”) inspected the main studio for station KWOX in Woodward, Oklahoma. The EAS unit had no audio signal on two of the three connected inputs. The unit’s date was set to 1/10/1995 and would not accept a date or time correction. The unit was set to automatically retransmit monthly tests. A review of the EAS logs for the previous five months found no entries for received weekly or monthly tests or sent monthly tests. The station attached eight printouts dated in January and February 1995 showing weekly tests sent to log entries for eight days in February, March, April, and May 2007. There were no log entries indicating why the missing weekly and monthly tests were not received or sent.

3. On October 23, 2007, the Dallas Office issued a *Notice of Apparent Liability for Forfeiture* to Omni in the amount of eight thousand dollars (\$8,000), for the apparent willful and repeated violation of Section 11.35(a).² Omni submitted a response to the *NAL* requesting cancellation of the proposed forfeiture.

III. DISCUSSION

¹ 47 C.F.R. § 11.35(a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732500006 (Enf. Bur., Dallas Office, October 23, 2007) (“*NAL*”).

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),³ Section 1.80 of the Rules,⁴ 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 Omni’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.⁵

5. Section 11.35(a) 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.⁶ 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 The EAS protocol includes the day in Julian calendar days, the time the message was released and a valid time period for the message.⁸

6. During the inspection on May 2, 2007, station KWOX’s EAS encoder/decoder was not operational, because it was missing audio inputs and the unit would not accept a correction to the date or time. Without the correct date and time, the unit could not properly validate any received or transmitted messages, and, therefore, would discard received messages⁹ and not automatically retransmit received messages. Station KWOX’s EAS unit was set to automatically retransmit monthly tests. The logs showed no weekly or monthly tests received or monthly tests sent for at least five months prior to the inspection and contained no explanation for the missing weekly and monthly received and sent tests. There was no other evidence that the equipment was fully operational during this five-month period.

7. In response to the *NAL*, Omni states that despite the fact that the station’s EAS encoder/decoder was missing audio inputs and had a date/time malfunction, the station sent and received all required EAS tests. To support its assertion, Omni submitted copies of its program logs from January through June 2007. Therefore, it claims its EAS unit was functional and able to transmit and receive EAS tests.

8. Assuming that Omni’s program logs are accurate, we nevertheless find that Omni’s EAS encoder/decoder was not fully operational. Although Omni was able to transmit many weekly tests,¹⁰ its program logs show that it failed to transmit any monthly EAS tests. Station KWOX could not re-transmit any monthly EAS tests, because the equipment was incapable of receiving any EAS tests, due to the date time problem. Moreover, even if the station had received a monthly test, Station KWOX could not automatically transmit a monthly test, because the EAS encoder/decoder, which was set to operate in automatic mode, was incapable of operating in automatic mode, due to the date time problem. In order

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(E).

⁶ 47 C.F.R. § 11.35(a).

⁷ 47 C.F.R. §§ 11.35(a), (b).

⁸ 47 C.F.R. § 11.31.

⁹ Some EAS units can be programmed to print an out-of-date message for received tests prior to discarding them. However, there were no such messages in station KMZE’s files.

¹⁰ According to Omni’s program logs, no weekly tests were transmitted between January 28 and February 17, 2008.

for the station to transmit monthly tests or actual emergency alerts,¹¹ someone would have to be sitting near the EAS encoder/decoder when the test or message was received and then manually transmit the test or message. Although the rules allow for the manual interrupt of programming and transmission of EAS messages, monthly EAS tests messages must be sent within 60 minutes of receipt and Emergency Action Notification (“EAN”) event codes must be transmitted immediately.¹² Between January and June 2007, Omni failed to transmit any monthly EAS tests, despite its assertions that it was monitoring several news and weather sources. Because Omni’s staff was not ready to transmit monthly EAS tests within 60 minutes or EAN event codes immediately,¹³ the transmitting function for monthly EAS tests and EAN messages was effectively unavailable. Therefore, based on the evidence before us, we find that Omni willfully¹⁴ and repeatedly¹⁵ violated Section 11.35(a) of the Rules by failing to ensure its EAS equipment was fully operational.

9. We have examined Omni’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 conclude that Omni willfully and repeatedly violated Section 11.35(a) of the Rules. We find no basis for cancellation or reduction of the \$8,000 forfeiture proposed for this violation.

IV. ORDERING CLAUSES

10. 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, Omni Communications, Inc. **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.¹⁶

11. 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/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications

¹¹ Licensees are not informed of the exact time at which monthly EAS tests are sent. Similarly, licensees cannot predict when actual emergencies will occur.

¹² See 47 C.F.R. § 11.51(k)(2).

¹³ Although Omni asserts that its station was staffed by personnel during the times the station was in operation, its staff was not closely monitoring for EAS monthly tests, as the station failed to transmit any monthly EAS tests between January and June 2007.

¹⁴ 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).

¹⁵ As provided by 47 U.S.C. § 312(f)(2), a continuous violation is “repeated” if it continues 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). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

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

¹⁷ 47 U.S.C. § 504(a).

Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment[s] by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Omni will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Omni Communications, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

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