

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

In the Matter of)	
)	
FM 92 Broadcasters, Inc.)	EB-07-DL-077
)	
Licensee of Station KMZE)	NAL/Acct. No. 200732500008
Woodward, Oklahoma)	
Facility ID # 21841)	FRN: 0003752946
)	

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 five thousand dollars (\$5,000) to FM 92 Broadcasters, Inc. (“Broadcasters”), licensee of station KMZE, in Woodward, Oklahoma, for willful and repeated violation of Section 11.35(a) of the Commission’s Rules (“Rules”).¹ The noted violation involves Broadcasters’ failure to install the required Emergency Alert System (“EAS”) equipment.

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 KMZE in Woodward, Oklahoma. The agent found that Station KMZE was sharing an EAS unit with co-located Station KWOX.²

3. In response to a Letter of Inquiry dated August 14, 2007 issued by the Dallas Office (“LOI”), Broadcasters stated that stations KMZE and KWOX were not commonly owned stations. Broadcasters also stated the shared EAS unit was owned by station KWOX and that it thought such sharing was not in violation of the Rules. Broadcasters stated that it purchased a separate EAS encoder for station KMZE following receipt of the Letter of Inquiry.

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

¹ 47 C.F.R. §§ 11.35(a), 73.1125(a).

² Station KWOX’s EAS unit was not able to operate in automatic mode, because it could not be set to a valid date and time. In addition, it had no audio signal on two of the three connected inputs. Station KWOX received a separate Notice of Apparent Liability for failing to have operational EAS equipment. *See Omni Communications, Inc., Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732500006 (Enf. Bur., Dallas Office, October 23, 2007).

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732500008 (Enf. Bur., Dallas Office, October 23,

III. DISCUSSION

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

6. 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.⁷ Section 11.51(l) of the Rules states that “EAS Participants that are co-owned and co-located with a combined studio or control facility, (such as an AM and FM licensed to the same entity and at the same location or a cable headend serving more than one system) may provide the EAS transmitting requirements contained in this section for the combined stations or systems with one EAS Encoder.”⁸ Section 11.51(l) does not authorize stations that are not co-owned to share an EAS encoder. During the inspection on May 2, 2007, station KMZE was sharing station KWOX’s EAS encoder. Stations KMZE and KWOX are co-located, but not co-owned stations. Accordingly, on May 2, 2007, station KMZE did not have an installed EAS encoder/decoder at its main studio. Broadcasters stated it did not obtain an EAS decoder for station KMZE until after August 14, 2007.

7. In response to the *NAL*, Broadcasters does not dispute that it did not have an EAS encoder/decoder for station KMZE. Rather, Broadcasters states that it was unaware that sharing EAS equipment violated the Rules, and that the agent failed to mention this violation during the inspection. However, a violation may be willful, “irrespective of any intent to violate any provision of this Act or any rule.”⁹ During the inspection, the agent did not point out that sharing EAS equipment violated the Rules, because stations KMZE and KWOX appeared to be co-owned and operated. The agent determined that the stations were not co-owned and operated based on Broadcasters response to the LOI. Nevertheless, during the inspection, Broadcasters was aware that station KMZE was sharing EAS equipment with a non-co-owned station and that this situation had been in place for more than one day. Thus, based on the evidence before us, we find that Broadcasters willfully¹⁰ and repeatedly¹¹ violated Section 11.35(a) of the

2007) (“*NAL*”).

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).

⁸ 47 C.F.R. § 11.51(l).

⁹ 47 U.S.C. § 312(f)(1).

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 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

Rules, by failing to install the required EAS equipment.

8. Broadcasters also asserts its violation posed no safety hazard, as “all EAS announcements required to be broadcast were in fact broadcast.” Regardless of whether this assertion is true,¹² the Commission has determined that co-located separately owned stations must have their own EAS equipment. It is undisputed that Broadcasters was in violation of the Rules, and we find no reason to reduce or cancel the forfeiture.

9. Finally, Broadcasters requests a reduction of the forfeiture based on its history of compliance with the Rules and its inability to pay the forfeiture. The Commission has determined that, in general, an entity's gross revenues are the best indicator of its ability to pay a forfeiture.¹³ After reviewing Broadcasters' financial documentation and history with the Commission, we conclude that a reduction of the forfeiture to \$5,000 would be appropriate.

10. We have examined Broadcasters' 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 Broadcasters willfully and repeatedly violated Section 11.35(a) of the Rules. However, we reduce the forfeiture for this violation to \$5,000, based on Broadcasters' history of compliance with the Rules and its inability to pay the forfeiture.

IV. ORDERING CLAUSES

11. 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, FM 92 Broadcasters, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five thousand dollars (\$5,000) for violation of Section 11.35 of the Rules.¹⁴

12. 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. 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 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

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).

¹² Station KWOX submitted copies of its program logs as evidence that all required EAS tests were sent. However, according to the station's program logs, no weekly tests were transmitted between January 28 and February 17, 2008, and no monthly EAS tests were sent between January and June 2007. The South Central Region of the Enforcement Bureau found that station KWOX's EAS equipment was not fully operational. *Omni Communications, Inc.*, Forfeiture Order, DA 08-1394 (rel. June 13, 2008).

¹³ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

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

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. FM 92 Broadcasters, Inc. will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to FM 92 Broadcasters, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

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