

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

In the Matter of)	
)	
Cox Radio, Inc.)	File No. EB-07-SE-433
FM Radio Station WKHK)	NAL/Acct. No. 200832100058
Colonial Heights, Virginia)	FRN No. 0001842533
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 23, 2008

Released: July 25, 2008

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture*, we find Cox Radio, Inc. (“Cox Radio”), licensee of FM radio station WKHK (“WKHK”), in Colonial Heights, Virginia,¹ apparently liable for a forfeiture in the amount of five thousand dollars (\$5,000) for willful violation of Section 11.32(a)(9)(v) of the Commission’s Rules (“Rules”).² The apparent violation involves station WKHK’s failure to protect the switch used to initiate the generation of the Emergency Alert System (“EAS”) two-tone Attention Signal (“tone”), resulting in the activation and broadcast of the EAS tone.

II. BACKGROUND

2. On November 28, 2007, the Enforcement Bureau (“Bureau”) received a complaint alleging that station WKHK interrupted a regular broadcast program with an EAS tone that was followed by the same commercial program instead of an actual EAS message³ or an EAS test.⁴ The complaint also alleged that similar EAS tone interruptions during WKHK’s regular broadcast programming were a reoccurring problem.

3. On January 29, 2008, the Bureau’s Spectrum Enforcement Division (“Division”) sent a letter of inquiry (“LOI”) to Cox Radio⁵ directing it to respond to the allegations against station WKHK.

¹ File No. BRH-20030602BBP. The Commission granted Cox Radio a license renewal for station WKHK on November 13, 2000. The license expires on October 1, 2011.

² 47 C.F.R. § 11.32(a)(9)(v).

³ See 47 C.F.R. Part 11, Subpart D.

⁴ 47 C.F.R. § 11.61.

⁵ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Bob Willoughby, Executive Manager, Radio Station WKHK - FM, Cox Radio, Inc. (January 29, 2008).

On February 27, 2008, Cox Radio filed its response to the LOI.⁶ In its response, Cox Radio states that on November 28, 2007, an employee of station WKHK was listening to an EAS weekly test on studio backup equipment and was unaware that “a data connection links the backup machine to certain live studio equipment, including EAS equipment.”⁷ Cox Radio states that at the end of the EAS sequence, the backup equipment “sent a trigger over this data connection to the studio’s EAS equipment, instructing the equipment to broadcast the EAS tone.”⁸ Cox Radio notes that upon hearing the EAS tone broadcast, the employee immediately notified the station’s engineering department. Cox Radio further notes that its chief engineer logged the event in station WKHK’s EAS logs and explained the reason for the EAS tone broadcast to the employee after the tone had aired. Cox Radio asserts that the November 28th incident was an “isolated” occurrence and “is not part of a larger pattern.”⁹ Additionally, Cox Radio asserts that it has retrained its studio operators on the transmission and reception of EAS tests and alerts to ensure that the events of November 28, 2007, are not repeated.

III. DISCUSSION

4. Section 503(b) of the Act,¹⁰ and Section 1.80(a) of the Rules,¹¹ provides that any person who willfully or repeatedly fails to comply with the provisions of the Act or the Rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Act, the term “willful” means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Commission’s rules.¹²

5. Under the Commission Rules, EAS Participants, such as station WKHK,¹³ are required to have in place dedicated equipment to initiate, receive, and retransmit EAS alerts and participate in EAS tests.¹⁴ The Commission’s Rules, under Part 11, Subpart B, set forth requirements for EAS equipment, including the format for the EAS protocol (used for sending and receiving EAS messages),¹⁵ and

⁶ See Letter from Counsel for Cox Radio, Inc., Robert J. Folliard, III, Esq., Dow Lohnes PLLC to Marlene H. Dortch, Secretary, Federal Communications Commission (February 27, 2008).

⁷ *Id.*, at 2, 4.

⁸ *Id.*

⁹ *Id.*, at 1.

¹⁰ 47 U.S.C. § 503(b).

¹¹ 47 C.F.R. § 1.80(a).

¹² The term “willful,” as used in Section 503(b) of the Act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate the Commission’s Rules. 47 U.S.C. § 312(f)(1). A violation is “repeated” within the meaning of Section 503(b) of the Act if it occurs more than once or continues for more than one day. 47 U.S.C. § 312(f)(2). See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹³ The Commission 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 (“EAS Participant”) unless the station affirmatively requests authority to not participate. 47 C.F.R. §§ 11.11 and 11.41.

¹⁴ See 47 C.F.R. § 11.1 *et. seq.*

¹⁵ The EAS protocol consists of four parts: Preamble and EAS Header Codes; two-tone audio Attention Signal (“EAS tone”); message; and Preamble and EAS End of Message (“EOM”) Codes. See 47 C.F.R. § 11.31(a).

minimum requirements for EAS encoders and decoders.¹⁶ Pursuant to Section 11.32 of the Rules, EAS encoders must be capable of encoding the EAS protocol and providing the EAS code transmission.¹⁷ In addition, under Section 11.32(a)(9)(v), EAS encoders are subject to a requirement that “the switch used for initiating the automatic generation of the simultaneous tones [*i.e.*, the two-tone Attention Signal or EAS tone] shall be protected to prevent accidental operation.”¹⁸ EAS Participants are required to conduct tests at regular intervals as specified in Section 11.61, and such tests are required to conform with the procedures in the EAS Operating Handbook.¹⁹ Section 11.61(a)(2) of the Rules and the EAS Handbook specify EAS test procedures for AM and FM broadcast stations, providing that required weekly tests consist of transmitting the EAS header codes and the EOM code.²⁰ No Attention Signal (EAS tone) is used for EAS weekly tests.²¹

6. Cox Radio admits that the station WKHK employee played the EAS weekly test on backup studio equipment and caused the inadvertent broadcast of the EAS tone. Cox Radio states that this error occurred because WKHK’s employee was unaware that use of the backup equipment would trigger a data transmission to the EAS equipment. As a Commission licensee, Cox Radio is charged with the responsibility of knowing and complying with the terms of its authorization and the Act and the Rules,²² including the requirements in place for preventing accidental operation of the equipment used to generate the EAS tone.²³ Accordingly, we find that Cox Radio station WKHK apparently violated Section 11.32(a)(9)(v) of the Rules by not protecting the controls that initiate the automatic generation of the EAS tone in a manner that would prevent accidental operation.

7. In determining the appropriate forfeiture amount, Section 503(b)(2)(E) of the Act directs us to consider factors, such as “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 such

¹⁶ 47 C.F.R. §§ 11.32, 11.33. The functions of the EAS encoder and decoder may be combined into a single unit referred to as an Encoder/Decoder provided that the unit complies with all specifications in Part 11 of the Commission’s Rules. *See* 47 C.F.R. § 11.34(c).

¹⁷ 47 C.F.R. § 11.32(a).

¹⁸ 47 C.F.R. § 11.32(a)(9)(v).

¹⁹ 47 C.F.R. § 11.61(a). The Emergency Alert System 2007 AM and FM Handbook (“EAS Operating Handbook”) can be found at www.fcc.gov/pshs/eas/easamfm.pdf.

²⁰ *See* 47 C.F.R. § 11.61(a)(1), EAS Operating Handbook at 29.

²¹ *See* 47 C.F.R. § 11.51(b); *also* 47 C.F.R. § 11.11(a), note 6 to Analog and Digital Broadcast Stations (“Effective January 1998, the two-tone signal [EAS tone] may only be used to provide audio alerts to audiences before EAS emergency messages and the required monthly tests.”)

²² *See Discussion Radio Incorporated*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 7433, 7437 (2004); *see also Gilmore Broadcasting Corporation*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 6284, 6286-87 (2006); *Criswell College*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 5106, 5109 (2006); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3926 (2006); *Journal Broadcast Corporation*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18211, 18214 (2005); *Shared Data Networks, LLC*, 20 FCC Rcd 18184, 18187 (2005).

²³ *See also* EAS Operating Handbook.

other matters as justice may require.”²⁴ Having considered the statutory factors, we propose a forfeiture in the amount of \$5,000 for Cox Radio station WKHK’s failure to protect against accidental generation of the EAS tone. There is no base forfeiture amount established for violation of Section 11.32(a)(9)(v). The base forfeiture amount for “EAS equipment not installed or operational” is, however, \$8,000.²⁵ We find that failure to protecting the controls that initiate the automatic generation of the EAS tone in a manner that would prevent accidental operation is not as serious as failure to have any EAS equipment installed or operational. We therefore conclude that a lower proposed forfeiture of \$5,000 is appropriate.

8. As the nation’s emergency warning system, the EAS system is critical to public safety. The transmission of EAS tones that are not part of an EAS test or actual emergency, whether intentional or accidental, compromises the integrity of the EAS system. Accordingly, we conclude that Cox Radio station WKHK is apparently liable for a \$5,000 forfeiture for its willful violation of Section 11.32(a)(9)(v) of the Rules.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act²⁶ and Sections 0.111, 0.311 and 1.80 of the Rules,²⁷ Cox Radio, Inc., licensee of FM Radio Station WKHK, **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of five thousand dollars (\$5,000) for willful violation of Section 11.32(a)(9)(v) of the Rules.

10. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,²⁸ within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Cox Radio, Inc., licensee of FM Radio Station WKHK, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. 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 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. Cox Radio, Inc., licensee of FM Radio Station WKHK, will also send electronic notification on the date said payment is

²⁴ 47 U.S.C. § 503(b)(2)(E); see also *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines (“Forfeiture Policy Statement”)*, Report and Order, 12 FCC Rcd 17087, 17110 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

²⁵ 47 C.F.R. § 1.80(b).

²⁶ 47 U.S.C. § 503(b).

²⁷ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

²⁸ 47 C.F.R. § 1.80.

made to Jacqui.Johnson@fcc.gov and JoAnn.Lucanik@fcc.gov.

12. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail return receipt requested to Robert J. Folliard, III, Esq., Counsel for Cox Radio, Inc., FM Radio Station WKHK, Dow Lohnes PLLC, 1200 New Hampshire Avenue, N.W., Suite 800, Washington, D.C., 20036-6802.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau