

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

In the Matter of)	
)	
First Baptist Church, Inc.)	File Number: EB-06-TP-171
)	
Licensee of Station WAKJ)	NAL/Acct. No.: 200832700003
DeFuniak Springs, FL)	
Facility ID # 68290)	FRN: 00074611536
)	

FORFEITURE ORDER

Adopted: January 28, 2008

Released: January 30, 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 two thousand dollars (\$2,000) to First Baptist Church, Inc. (“First Baptist”), licensee of non-commercial FM station WAKJ, DeFuniak Springs, FL, for willful and repeated violation of Sections 11.35(a) and 73.1125(a) of the Commission’s Rules (“Rules”).¹ The noted violations involve First Baptist’s failure to install the required Emergency Alert System (“EAS”) equipment and failure to maintain full-time managerial and staff personnel at the main studio during normal business hours.

II. BACKGROUND

2. On August 9, 2006, agents from the Commission’s Tampa Office of the Enforcement Bureau (“Tampa Office”) were unable to inspect station WAKJ’s main studio in DeFuniak Springs, Florida during normal business hours, because it was unattended. The agents telephoned First Baptist and were told that the station’s General Manager, the only person with a key to the station’s transmitter location, was away for the week. First Baptist arranged for a janitor to let the agents into the main studio. A few days later, agents informed the General Manager that main studios must be staffed full-time by managerial and staff personnel during normal business hours.

3. On April 3, 2007, an agent from the Commission’s Atlanta Office of the Enforcement Bureau attempted to inspect the station’s main studio during normal business hours and found it unattended. The agent telephoned First Baptist, and someone was sent over who provided the agent access to the station’s public inspection file and offered to provide access to the main studio.

4. On May 15, 2007, agents from the Tampa Office inspected the main studio of station and found that the station had no EAS equipment installed. The General Manager stated that he was unaware that non-commercial FM stations were required to have installed EAS equipment. The station did have an uninstalled EAS encoder/decoder in a box at the main studio. The General Manager, who is also the Chief Operator, stated that he is usually the only person from the station present at the main studio between the hours of 8 A.M. and 5 P.M.

¹ 47 C.F.R. §§ 11.35(a), 73.1125(a).

5. On November 28, 2007, the Tampa Office issued a *Notice of Apparent Liability for Forfeiture* to First Baptist in the amount of fifteen thousand dollars (\$15,000) for the apparent willful and repeated violation of Sections 11.35(a) and 73.1125(a) of the Rules.² First Baptist submitted a response to the *NAL* requesting a reduction or cancellation of the proposed forfeiture.

III. DISCUSSION

6. 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 First Baptist’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

7. Section 11.35(a) of the Rules requires Broadcast stations to be responsible for ensuring that ... EAS Encoders and EAS Decoders ... used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the stations are in operation.⁶ Section 11.11(a) of the Rules states that as of January 1, 1997, FM stations are required to have an EAS encoder and decoder.⁷ During the May 15, 2007 inspection of the station, station WAKJ was in operation, and no EAS equipment was installed at the station. The General Manager stated that he didn’t know that non-commercial FM stations were required to have installed EAS equipment. However, he was aware that an uninstalled EAS encoder/decoder was sitting in a box in the main studio. Thus, based on the evidence before us, we find that First Baptist willfully⁸ and repeatedly⁹ violated Section 11.35(a) of the Rules by failing to install the required EAS equipment.

8. In response to the *NAL*, First Baptist admits that the station did not have installed EAS equipment at the station on May 15, 2007. It states that when the station moved to its new main studio, it forgot to reinstall the EAS equipment and that the equipment remained in the box where it was discovered

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832700003 (Enf. Bur., Tampa Office, November 28, 2007) (“*NAL*”).

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ 47 C.F.R. § 11.35(a).

⁷ 47 C.F.R. § 11.11(a). Class D non-commercial educational FM stations are required to have EAS decoders installed and operational. See 47 C.F.R. §§ 11.11(a), 11.11(b). Station WAKJ, however, is a Class A non-commercial FM station.

⁸ 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).

⁹ 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).

by the Commission agents. First Baptist states that the EAS equipment was reinstalled in June 2007 and that its first report was run on June 5, 2007. First Baptist presents no arguments that would warrant reduction or cancellation of the forfeiture, because it took no action to comply with the EAS Rules prior to the agents' inspection.¹⁰ Corrective action taken to come into compliance with the Rules after an inspection is expected, and does not nullify or mitigate any prior forfeitures or violations.¹¹

9. Section 73.1125(a) of the Rules requires FM stations to maintain a main studio. "A station must equip the main studio with production and transmission facilities that meet applicable standards, maintain continuous program transmission capability, and maintain a meaningful management and staff presence."¹² The Commission has defined a minimally acceptable "meaningful presence" as full-time managerial and full-time staff personnel.¹³ Although management personnel are not required to be "chained to their desks" during normal business hours, the main studio must remain "attended [by staff] during normal business hours."¹⁴ On August 9, 2006, agents were unable to inspect the main studio of station WAKJ, because it was unattended. The General Manager was informed of the main studio staffing requirements in August 2006. On April 3, 2007, an agent attempted to inspect the main studio during normal business hours, but found it unattended. A station representative arrived at the main studio a few minutes after the agent contacted the station. On May 15, 2007, the station's General Manager stated that he is typically the only station representative at the main studio during normal business hours. Thus, based on the evidence before us, we find that First Baptist willfully and repeatedly violated Section 73.1125(a) of the Rules by failing to maintain full-time managerial and staff personnel at its main studio.

10. In its response to the *NAL*, First Baptist states that it thought it was required to only have one person present at the main studio. While it admits that agents were unable to inspect the main studio on August 9, 2006, it states the agent could have inspected the main studio on April 3, 2007 after the station representative arrived. It requests a reduction or cancellation of the forfeiture because inspection was only thwarted on one day, as opposed to two days as cited in the *NAL*.¹⁵

11. We find no basis upon which to cancel or reduce the forfeiture. On August 9, 2006 and April 3, 2007, the main studio for station WAKJ was unattended during normal business hours. Although, on April 3, 2007, a station representative arrived after being contacted, First Baptist was not in compliance with the Rules, because it did not maintain full-time managerial *and* staff personnel *at* the main studio. Main studios are required to be attended during normal business hours, and such was not the case on the two days in question. The fact that the agent could have inspected the main studio on April 3, 2007 does not negate the fact that the main studio was not adequately attended. Moreover, in its response to the *NAL*, First Baptist admits that, on most days, no more than one employee, the General Manager, was present at the main studio. It is also irrelevant that First Baptist was unaware that its interpretation of the main studio staffing requirements was incorrect.¹⁶

¹⁰ During the inspection, the General Manager stated he did not know that non-commercial stations were required to install EAS equipment, and, therefore, had not attempted to install the EAS equipment. First Baptist states in its response to the *NAL* that it forgot to install the EAS equipment, implying that it knew it was required to maintain EAS equipment. In either case, it is undisputed that First Baptist took no action regarding the EAS equipment, prior to the agents' inspection.

¹¹ See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

¹² *Main Studio and Program Origination Rules*, Memorandum Opinion and Order, 3 FCC Rcd 5024, 5026 (1988).

¹³ *Jones Eastern of the Outer Banks, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 3615, 3616 (1991), clarified 7 FCC Rcd 6800 (1992).

¹⁴ See *id.* at 7 FCC Rcd at 6802.

¹⁵ The *NAL* stated that the agent was unable to inspect the main studio, because it was unattended. It omitted the fact that someone arrived later to show the agent the public inspection file.

¹⁶ See *supra* note 8.

12. Finally, First Baptist 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.¹⁷ After reviewing First Baptist's financial documents and its history with the Commission, we reduce the forfeiture to \$2,000, based on its demonstrated inability to pay the forfeiture and its history of compliance with the Rules.

13. We have examined First Baptist'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 First Baptist willfully and repeatedly violated Sections 11.35(a) and 73.1125(a) of the Rules. However, we reduce the forfeiture for these violations to \$2,000, based on First Baptist's inability to pay and history of compliance with the Rules.

IV. ORDERING CLAUSES

14. 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, First Baptist Church, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of two thousand dollars (\$2,000) for violation of Sections 11.35 and 73.1125 of the Rules.¹⁸

15. 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.¹⁹ 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 plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.²⁰

¹⁷ 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).

¹⁸ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 11.35, 73.1125.

¹⁹ 47 U.S.C. § 504(a).

²⁰ See 47 C.F.R. § 1.1914.

16. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to First Baptist Church, Inc. at its address of record and to its counsel, Lee G. Petro, Fletcher, Heald & Hildreth, PLC, 1300 North 17th St., 11th Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

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