

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

In the Matter of)	
)	
Action Radio, LLC)	
)	File Number: EB-07-PO-083
Former Licensee of Stations KZZR(AM) and)	NAL/Acct. No.: 200732920005
KQHC-FM)	FRN: 0013304258
Burns, Oregon)	
Facility ID Numbers 62265 and 62264)	

ORDER

Adopted: March 27, 2008

Released: March 31, 2008

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Order* (“*Order*”), we cancel a proposed monetary forfeiture to Action Radio, LLC (“Action Radio”), former licensee of broadcast stations KZZR(AM) and KQHC-FM,¹ in Burns, Oregon, and admonish Action Radio for its willful and repeated violation of Section 11.35(a) of the Rules. On August 14, 2007, the Enforcement Bureau’s Portland Resident Agent Office issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) in the amount of \$8,000 to Action Radio for willful and repeated violation of Section 11.35(a) of the Commission's Rules (“Rules”)² by failing to ensure the operational readiness of the KZZR(AM) and KQHC-FM Emergency Alert System (“EAS”) equipment.

II. BACKGROUND

2. On July 26, 2007, in response to a complaint, an agent of the Enforcement Bureau’s Portland Resident Agent Office inspected the EAS equipment installed at KZZR(AM) and KQHC-FM’s studio in Burns, Oregon. The inspection revealed that the KZZR(AM) and KQHC-FM EAS encoder/decoder, model Sage, was not operational and that the date stamp was reset to a default year of 1995. The agent reviewed the KZZR(AM) and KQHC-FM EAS logs and observed that the last EAS entry was a Required Weekly Test transmitted on July 24, 2006. In response to questions from the Portland agent, the Action Radio general manager and assistant general manager acknowledged that KZZR(AM) and KQHC-FM had not conducted any EAS Tests or alerts for “over a year” because of the non-operational EAS equipment.

3. On August 14, 2007, the Portland Resident Agent Office issued a *NAL* in the amount of \$8,000 to Action Radio.³ In the *NAL*, the Portland Office found that Action Radio apparently willfully and repeatedly violated Section 11.35(a) of the Rules by failing to ensure the operational readiness of the EAS equipment at KZZR(AM) and KQHC-FM. Action Radio filed a response to the *NAL* on October 5, 2007 (“*Response*”). In its *Response*, Action Radio does not deny the inoperability of the EAS equipment,

¹ On October 1, 2007, an assignment of the KZZR(AM) and KQHC-FM licenses from Action Radio, LLC, to B & H Radio, Inc., was granted. See File No. BAL-20070807ABH. The transaction was consummated on October 1, 2007.

² 47 C.F.R. § 11.35(a).

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732920005 (Enf. Bur., Western Region, Portland Resident Agent Office, released August 14, 2007).

but requests that the forfeiture be reduced or cancelled based on its history of compliance with the Commission's Rules, and its ability to pay the forfeiture because of its financial situation.

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*.⁶ In examining the *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.⁷

5. The 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 unless the station affirmatively requests authority to not participate.⁸ The EAS provides the President and state and local governments with the capability to provide immediate and emergency communications and information to the general public.⁹ State and local area plans identify local primary sources responsible for coordinating carriage of common emergency messages from sources such as the National Weather Service or local emergency management officials.¹⁰ Required monthly and weekly tests originate from EAS Local or State Primary sources and must be retransmitted by the participating station

6. Section 11.35 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. 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.¹¹

7. Action Radio does not deny the violations described in the *NAL*, but asserts that it has a history of compliance with the Commission's Rules. We have reviewed our records, and we agree. Action Radio also asserts that the forfeiture will result in a financial hardship to Action Radio, and supplies tax returns and financial records for Action Radio, LLC, and its sole member. After reviewing the *Response*, the financial documentation submitted, as well as the assignment of license application for KZZR(AM) and KQHC-FM, we conclude that payment of the proposed \$8,000 forfeiture would impose financial hardship on Action Radio. Furthermore, we note Action Radio is no longer the licensee of KZZR(AM) and KQHC-FM, holds no other broadcast licenses, and it appears to have no assets since the

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ 47 C.F.R. §§ 11.11 and 11.41.

⁹ 47 C.F.R. §§ 11.1 and 11.21.

¹⁰ 47 C.F.R. § 11.18. State EAS plans contain guidelines that must be followed by broadcast and cable personnel, emergency officials and National Weather Service personnel to activate the EAS for state and local emergency alerts. The state plans include the EAS header codes and messages to be transmitted by the primary state, local and relay EAS sources.

¹¹ 47 C.F.R. § 11.35(a) and (b).

consummation of the transaction concerning the assignment of those two stations. Therefore, we conclude that cancellation of the forfeiture is warranted.¹² Nevertheless, we find that it is appropriate to admonish Action Radio for its willful and repeated violation of Section 11.35(a) of the Rules.

IV. ORDERING CLAUSES

8. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules, that the proposed forfeiture in the amount of eight thousand dollars (\$8,000) issued to Action Radio, LLC, in the August 14, 2007, Notice of Apparent Liability for willful and repeated violations of Section 11.35 of the Rules **IS CANCELLED**.

9. **IT IS FURTHER ORDERED** that Action Radio, LLC, **IS ADMONISHED** for its willful and repeated violations of Section 11.35(a) of the Rules.

10. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Action Radio, LLC, at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

¹² See *Grass Roots Broadcasting, LLC*, 19 FCC Rcd 4018 (EB 2004); *Lighthouse Broadcasting*, 18 FCC Rcd 9573 (EB 2003).