

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

In the Matter of)	
)	
Opp Educational Broadcasting Foundation)	File No. EB-08-SE-614
FM Broadcast Station WJIF)	NAL/Acct. No. 200932100076
Opp, Alabama)	FRN No. 0010252856
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: August 27, 2009

Released: August 31, 2009

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture and Order* (“NAL”), we find Opp Educational Broadcasting Foundation (“Opp Ed”), licensee of FM Broadcast Station WJIF (“WJIF”) in Opp, Alabama,¹ apparently liable for a forfeiture in the amount of nineteen thousand dollars (\$19,000) for willfully and repeatedly violating Sections 11.35 and 11.61(a) of the Commission’s Rules (“Rules”)² and for willfully and repeatedly violating Section 73.1015 of the Rules.³ The noted violations involve WJIF’s failure to maintain operable Emergency Alert System (“EAS”) equipment and failure to conduct required EAS tests and Opp Ed’s failure to respond to directives of the Enforcement Bureau’s Spectrum Enforcement Division (“Division”) to provide certain information and documents. We also order Opp Ed to respond fully to the Division’s Follow-Up Letter of Inquiry (“LOI”) within ten (10) days of release of this NAL. If Opp Ed again fails to submit complete responses, it will be subject to further enforcement action.

II. BACKGROUND

2. On August 7, 2008, the Division received a complaint alleging that WJIF did not participate in the EAS and had never transmitted an EAS test. Part 11 of the Rules⁴ includes FM broadcasts stations as EAS participants and describes the required technical standards and operational procedures for EAS participation. EAS participants are required to use a common EAS protocol⁵ to send and receive

¹ File No. BRED-20040122AEE. The Commission granted Opp Educational Broadcasting Foundation a license renewal for station WJIF on January 31, 2007. The license expires on April 1, 2012.

² 47 C.F.R. §§ 11.35 and 11.61(a).

³ 47 C.F. R. § 73.1015.

⁴ 47 C.F.R. §§ 11.1 - 11.61.

⁵ 47 C.F.R. §11.31.

emergency alerts⁶ and to participate in EAS test transmissions.⁷ On November 4, 2008, the Division issued a Letter of Inquiry (“LOI”) to Opp Ed in order to assess WJIF’s compliance with EAS Rules.⁸ The LOI directed Opp Ed to address the allegations against WJIF by responding to specific questions and providing specific information and documentation. In particular, the LOI sought information concerning whether WJIF has installed EAS equipment and conducts required EAS tests, and if so, the EAS equipment manufacturer, model and date of installation; whether WJIF announces EAS tests to its listening audience; and requested WJIF to identify at least two EAS sources that it monitors. The LOI also requested a description or copy of the policies and procedures in place to ensure compliance with the EAS Rules and a copy of all station logs recording EAS test transmissions and any EAS equipment outages or repairs as required to be maintained under Section 73.1820 of the Rules.⁹ Opp Ed’s response to the LOI was due on December 4, 2008, 30 calendar days from the date of the LOI, and covered the period from January 31, 2007 to the date of its response.

3. On December 30, 2008, the Division received Opp Ed’s LOI Response, dated December 18, 2008.¹⁰ In its response to the LOI, Opp Ed failed to answer any of the inquiries set forth in the LOI, except to state in general terms that WJIF has “in the past, participated in the national Emergency Alert System” but “at present the [EAS] equipment is not operating properly and has to be repaired.”¹¹ Opp Ed also made the broad assertion that it will take “the necessary steps to correct this problem as soon as possible.”¹² Opp Ed provided no response to specific inquiries posed by the Division regarding WJIF’s EAS equipment, the date of installment, announcements of EAS tests, EAS sources that it monitors, and failed to provide a copy of WJIF’S EAS policies and procedures and all station logs.

4. On March 4, 2009, the Division issued a Follow-Up LOI¹³ to Opp Ed, notifying it that it had not provided all the information required by the LOI and that the information that it did provide had raised additional questions. The Follow-Up LOI directed Opp Ed to provide the requested WJIF EAS station log documentation, to confirm its compliance with Section 11.35(c) of the Rules, and to address the status, including dates, of its EAS equipment inoperability, repair or replacement. The Follow-Up LOI explicitly warned Opp Ed that failure to respond appropriately to the Follow-Up LOI may result in enforcement action. The Follow-Up LOI was sent by certified mail return receipt requested, first class mail, and facsimile to the Commission address and facsimile number of record used for the November 4, 2008 LOI. The certified mail return receipt confirms delivery of the Follow-Up LOI on March 9, 2009.

⁶ 47 C.F.R. §11.11(a).

⁷ 47 C.F.R. § 11.61(a).

⁸ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Mr. Haywood F. Nawlin, Administrator, Opp Educational Broadcasting Foundation, Licensee of Radio Station WJIF (November 4, 2008).

⁹ 47 C.F.R. § 73.1820.

¹⁰ See Letter from Haywood F. Nawlins, WJIF Radio to Kathryn S. Berthot Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (dated December 18, 2008) (“LOI Response”).

¹¹ *Id.*

¹² *Id.*

¹³ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Mr. Haywood F. Nawlin, Administrator, Opp Educational Broadcasting Foundation, Licensee of Radio Station WJIF (March 4, 2009) (“Follow-Up LOI”).

The facsimile transmittal receipt confirms satisfactory transmission of the Follow-Up LOI on March 4, 2009. To date, Opp Ed has not responded to the Follow-Up LOI.

III. DISCUSSION

5. Section 503(b) of the Act,¹⁴ and Section 1.80(a) of the Rules,¹⁵ 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 and “repeated” means more than once.¹⁶

A. Failure to Comply With EAS Requirements

6. As a Commission licensee, Opp Ed is charged with the responsibility of knowing and complying with the terms of its authorization and the Act and the Rules. The EAS system, as the nation’s emergency warning system, is critical to public safety.¹⁷ Section 11.11(a) specifies that FM broadcast stations are classified as EAS Participants and “[a]t a minimum ... must use common EAS protocol ... to send and receive emergency alerts.”¹⁸ The Rules also require EAS Participants to conduct tests at regular intervals in accordance with Section 11.61(a) and the EAS Operating Handbook.¹⁹ In addition, Section 11.35 of the Rules sets forth the requirements for EAS Participants to ensure EAS equipment “operation readiness” and to repair or replace EAS equipment that is not working.²⁰ Failing to participate in the EAS compromises the integrity of the national EAS system.

7. In its LOI Response, which was dated December 18, 2009, Opp Ed states that WJIF has, in the past, participated in the EAS. Opp Ed admits, however, that WJIF’s EAS equipment was “at present” not operating properly and was in need of repair. Although Opp Ed states it would be taking necessary steps to “correct this problem as soon as possible,” it made no representation as to what steps it would take to ensure proper working EAS equipment and made no attempt to provide a time frame as to when repair or replacement of the EAS equipment would be made. Section 11.35(c) of the Rules requires an EAS participant who has not repaired or replaced defective equipment after 60 days to submit an informal request for additional time to repair its defective equipment to the District Director of the FCC Field Office

¹⁴ 47 U.S.C. § 503(b).

¹⁵ 47 C.F.R. § 1.80(a).

¹⁶ 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).

¹⁷ 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.

¹⁸ *See* 47 C.F.R. § 11.11(a); *see also* 47 C.F.R. § 11.31.

¹⁹ 47 C.F.R. § 11.61(a). The Emergency Alert System 2007 AM and FM Handbook (“EAS Operating Handbook”) can be found at <http://www.fcc.gov/pshs/services/eas/handbooks.html>.

²⁰ 47 C.F.R. § 11.35.

servicing the participant's area.²¹ To date, Opp Ed has not submitted a request or contacted the Commission's Atlanta, Georgia Field Office to request additional time to repair WJIF's EAS equipment. We, therefore, find Opp Ed in apparent willful and repeated violation of Sections 11.35 and 11.61(a) of the Rules for failure to maintain operable EAS equipment and failure to conduct required EAS tests.

B. Failure to Respond to Commission Inquiry

8. Section 73.1015 of the Rules²² states that "the Commission or its representative may, in writing, require from any applicant, permittee, or licensee written statements of fact relevant to a determination whether an application should be granted or denied, or to a determination whether a license should be revoked, or to any other matter within the jurisdiction of the Commission" and that any such statements are subject to the provisions of Section 1.17 of the Rules.²³ Section 1.17 of the Rules requires that any person that receives a letter of inquiry from the Commission or its staff "shall not intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading."

9. As noted above, the Division twice directed Opp Ed to provide certain information and documents related to WJIF's participation in the EAS and the operational status of its EAS equipment. Such information was necessary to enable the Commission to perform its enforcement function and evaluate whether WJIF violated Commission rules. There is no question that Opp Ed received the Division's LOI and Follow-Up LOI. Opp Ed failed to provide full and complete responses to the inquiries posed by the LOI, making only a broad assertion that WJIF's EAS equipment was in need of repair and that it would take necessary steps to correct the problem as soon as possible. Further, Opp Ed failed to provide any response to the Division's Follow-Up LOI. We, therefore, find Opp Ed's failure to respond to the Division's inquiries constitutes an apparent willful and repeated violation of Section 73.1015 of the Rules.²⁴

C. Proposed Forfeiture

10. Section 503(b)(1) of the Act and Section 1.80(a)(1) of the Rules authorize the Commission to assess forfeiture for each willful or repeated violation of the Act or of any rule, regulation, or order issued by the Commission under the Act.²⁵ 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 other matters as justice may require."²⁶

11. Section 1.80 of the Rules and the Commission's *Forfeiture Policy Statement* establish a base forfeiture amount of eight thousand (\$8,000) for "EAS equipment not installed or operational."²⁷

²¹ 47 C.F.R. § 11.35(c).

²² 47 C.F.R. § 73.1015.

²³ 47 C.F.R. § 1.17.

²⁴ 47 C.F.R. § 73.1015.

²⁵ 47 U.S.C. § 503(b)(1); 47 C.F.R. § 1.80(a)(1).

²⁶ 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).

²⁷ See 47 C.F.R. § 1.80(b)(4); *Forfeiture Policy Statement*, 12 FCC Rcd at 17113.

Having considered the statutory requirements, we propose the base forfeiture amount of \$8,000 for WJIF's failure to have EAS equipment installed and operational. As the nation's emergency warning system, the EAS system is critical to public safety. WJIF's failure to have EAS equipment installed or operational compromises the integrity of the EAS system. Accordingly, we conclude that Opp Ed is apparently liable for an \$8,000 forfeiture for WJIF's willful and repeated violation of Sections 11.35 and 11.61(a) of the Rules for failure to maintain operable EAS equipment and failure to conduct required EAS tests.

12. Section 1.80 of the Rules and the Commission's *Forfeiture Policy Statement* establish a base forfeiture amount of \$4,000 for failure to respond to Commission communications.²⁸ We find that Opp Ed's failure to respond to the Division's LOI and Follow-Up LOI in the circumstances presented here warrants an increase to the base forfeiture amount. Misconduct of this type exhibits contempt for the Commission's authority and threatens to compromise the agency's ability to adequately investigate violations of its Rules. Prompt and full responses to Division inquiry letters are essential to the Commission's enforcement function. In this case, Opp Ed's apparent violations touch on an area of critical importance -- the integrity of the EAS system. We therefore propose an \$11,000 forfeiture against Opp Ed for twice failing to respond to Commission communications. This forfeiture amount is consistent with precedent in similar cases, where companies failed to provide responses to Bureau inquiries concerning compliance with the Commission's rules despite evidence that the LOIs had been received.²⁹

13. We also direct Opp Ed to respond fully to the Follow-up LOI within ten (10) days of the release of this *Notice of Apparent Liability for Forfeiture and Order*. Failure to do so may constitute an additional violation subjecting WJIF to further penalties, including potentially higher monetary forfeitures.

14. Accordingly, based on the facts, we find Opp Ed apparently liable for a combined forfeiture of \$19,000 for WJIF's apparent willful and repeated violation of Sections 11.35, 11.61(a) and 73.1015 of the Rules.

IV. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act³⁰ and Sections 0.111, 0.311 and 1.80 of the Rules,³¹ Opp Educational Broadcasting Foundation, Licensee of FM Radio Station WJIF, **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of nineteen thousand dollars (\$19,000) for willful and repeated violation of Sections 11.35, 11.61(a) and 73.1015 of the Rules.

16. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,³² within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture and Order*, Opp Educational

²⁸ See 47 C.F.R. § 1.80(b)(4); *Forfeiture Policy Statement*, 12 FCC Rcd at 17114.

²⁹ See, e.g., *Charter Communications, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 24 FCC Rcd 917, 921 (Enf. Bur. 2009) (proposing \$25,000 forfeiture for failing to fully respond to LOI); *Digital Antenna, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7600, 7602 (Enf. Bur., Spectrum Enf. Div. 2008) (proposing \$11,000 forfeiture for failing to fully respond to LOI); *Hauppauge Computer Works, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 3684, 3686 (Enf. Bur., Spectrum Enf. Div. 2008) (proposing \$11,000 forfeiture for failing to fully respond to LOI).

³⁰ 47 U.S.C. § 503(b).

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

³² 47 C.F.R. § 1.80.

Broadcasting Foundation, Licensee of FM Radio Station WJIF, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

17. **IT IS FURTHER ORDERED** that Opp Educational Broadcasting Foundation, Licensee of FM Radio Station WJIF, shall fully respond to the March 4, 2009 Follow-Up Letter of Inquiry sent by the Enforcement Bureau in the manner described in the Letter of Inquiry and the Follow-Up Letter of Inquiry within ten (10) days of the release of this *Notice of Apparent Liability for Forfeiture and Order*.

18. 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. Opp Educational Broadcasting Foundation, Licensee of FM Radio Station WJIF, will also send electronic notification on the date said payment is made to Jacqui.Johnson@fcc.gov and JoAnn.Lucanik@fcc.gov.

19. 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.

20. 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.

21. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture and Order* shall be sent by first class mail and certified mail return receipt requested to Mr. Haywood F. Nawlin, Administrator, Opp Educational Broadcasting Foundation, Licensee of FM Radio Station WJIF, 104 Folsom Street, Opp, Alabama 36467.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau