

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

In the Matter of	)	
	)	
Bethune-Cookman College, Inc.	)	File Number EB-08-TP-0406
	)	
Licensee of station WRWS-LP	)	NAL/Acct. No. 200932700004
Daytona Beach, FL 32114-3099	)	
Facility ID Number: 134386	)	FRN: 0009502865
	)	

**FORFEITURE ORDER**

**Adopted:** April 9, 2009

**Released:** April 13, 2009

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 nine thousand six hundred dollars (\$9,600) to Bethune-Cookman College, Inc. (“Bethune-Cookman”), licensee of station WRWS-LP, in Daytona Beach, Florida, for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”),<sup>1</sup> and Section 11.35(a) of the Commission’s Rules (“Rules”).<sup>2</sup> The noted violations involve Bethune-Cookman’s operation of an unlicensed radio transmitter and failure to install the required Emergency Alert System (“EAS”) equipment.

**II. BACKGROUND**

2. On October 31, 2008, agents from the Commission’s Tampa Office of the Enforcement Bureau (“Tampa Office”), accompanied by the station’s general manager and chief engineer, conducted an inspection of low power FM radio station WRWS-LP’s main studio in Daytona Beach, Florida during normal business hours. The agents observed that the station was using a broadcast studio to transmitter link (“STL”) transmitter.<sup>3</sup> The station’s chief engineer stated that the station was operating an STL on 950.000 MHz with 2.8 watts of output power. Neither the chief engineer nor the general manager could produce a license for the STL operation or any evidence that the station had ever had an STL license. The agents also observed that the station did not have an installed EAS decoder. The general manager stated that he was unaware that non-commercial low power FM stations were required to have EAS equipment. The chief engineer stated that he tried before, without success, to convince the station management that an EAS decoder was needed.

3. After the inspection of the main studio, the agents from the Tampa Office inspected the station’s transmitter site, also in Daytona Beach, Florida. The agents observed an STL receiver in operation at the transmitter site. Using direction finding techniques, the agents confirmed the station was

<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 47 C.F.R. § 11.35(a).

<sup>3</sup> The transmitter in use was an Armstrong XLINK STL transmitter, a device designed to be used pursuant to Part 73 of the Rules.

operating an STL from the main studio to the transmitter site on 950.000 MHz. There were no other means by which to transmit the station's programming from the main studio to the transmitter site, besides the STL equipment.

4. On January 21, 2009, the Tampa Office issued a *Notice of Apparent Liability for Forfeiture* to Bethune-Cookman in the amount of eighteen thousand dollars (\$18,000), for the apparent willful and repeated violation of Section 301 of the Act and Section 11.35(a) of the Rules.<sup>4</sup> Bethune-Cookman submitted a response to the *NAL* requesting a reduction or cancellation of the proposed forfeiture.

### III. DISCUSSION

5. The proposed forfeiture amounts in this case was assessed in accordance with Section 503(b) of the Act,<sup>5</sup> Section 1.80 of the Rules,<sup>6</sup> 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 Bethune-Cookman'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.<sup>7</sup>

6. Section 301 of the Act requires that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license.<sup>8</sup> The Act specifically defines within the United States as transmissions or communications from one place within a Territory: to another place in the same Territory; to another State, Territory or possession of the United States; or to any place in a foreign country or to any vessel. Section 74.6 of the Rules<sup>9</sup> states applicants for and licensees of low power auxiliary stations authorized under subparts D, E, F, and H of this part are subject to the application and procedural rules for wireless telecommunications services contained in part 1, subpart F of this chapter. Section 1.903 of the Rules,<sup>10</sup> located in part 1, subpart F, requires stations in the Wireless Radio Services to be used and operated with a valid authorization granted by the Commission. During the inspection on October 31, 2008, agents from the Tampa Office observed that station WRWS-LP was operating an aural broadcast STL on the frequency of 950.00 MHz. The station's general manager and chief engineer admitted that the station was using 950.00 MHz to transmit the station's programming from the main studio to the transmitter site. When the agents requested to see the license for the STL link, the general manager and chief engineer admitted that they did not have an authorization for the operation. Later on this date, using direction finding techniques, the agents confirmed that WRWS-LP was operating the broadcast STL on 950.00 MHz from the main studio to the transmitter site. The station operates all year, Monday to Friday from 3:00 am until 3:00 pm. In addition, between July 1 and December 31, the station operates from 3:00 am Saturday until 3:00 am Sunday. At the time of the inspection, there was no other means by which to transmit programming from the main studio to the transmitter site.<sup>11</sup>

<sup>4</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200932700004 (Enf. Bur., Tampa Office, January 21, 2009) ("*NAL*").

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>8</sup> 47 U.S.C. § 301.

<sup>9</sup> 47 C.F.R. § 74.6.

<sup>10</sup> 47 C.F.R. § 1.903.

<sup>11</sup> Because the station began broadcasting on February 12, 2008, the STL transmitter was in use more than 720 hours

7. In response to the *NAL*, Bethune-Cookman does not deny that it operated an unlicensed STL. Nevertheless, it requests a reduction of the proposed forfeiture on the basis of its good faith efforts to comply with the Rules. Bethune-Cookman provided evidence that in April 2005 it paid an entity to prepare and submit the 601 Form necessary to obtain a license for the STL. Bethune-Cookman asserts it does not know why the license was never obtained and is in the process of obtaining a license for its STL. Bethune-Cookman adds that the STL violation occurred during the tenure of the previous Dean and was not reported or observed by the current Dean. Bethune-Cookman also requests a reduction, because it alleges its violation is more akin to operation of unauthorized equipment, which carries a base forfeiture of \$5,000.

8. Based on the evidence before us, we find that Bethune-Cookman willfully<sup>12</sup> and repeatedly<sup>13</sup> violated Section 301 of the Act by operating an unlicensed radio transmitter. Bethune-Cookman is responsible for actions, which occurred during the current and previous Deans' tenures. The Commission has consistently found "[l]icensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors,"<sup>14</sup> and when the actions of independent contractors or employees have resulted in violations, the Commission has "consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations."<sup>15</sup> Moreover, we do not find a reduction based on good faith compliance with the rules is warranted. Although Bethune-Cookman hired a contractor to obtain an STL license in April 2005, it failed to follow up with the contractor or otherwise inquire about the status of its missing STL license until after the agents' inspection.<sup>16</sup> However, because Bethune-Cookman has a valid license for station WRWS-LP and only operated an unlicensed STL, the unauthorized operation in this case is not a violation on the same order as is construction and operation with no color of authority.<sup>17</sup> Accordingly, we reduce the forfeiture associated with this violation to \$4,000.

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annually. *See* 47 C.F.R. § 74.24(d).

<sup>12</sup> 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).

<sup>13</sup> 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. 97<sup>th</sup> 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).

<sup>14</sup> *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863,-64, para. 7 (2002); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34 (1991)(holding that a company's reliance on an independent contractor to construct a tower in compliance of FCC rules does not excuse that company from a forfeiture); *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972) (holding a licensee responsible for violations of FCC rules despite its reliance on a consulting engineer); *Petracom of Joplin, L.L.C.*, 19 FCC Rcd 6248 (Enf. Bur. 2004) (holding a licensee liable for its employee's failure to conduct weekly EAS tests and to maintain the "issues/programs" list).

<sup>15</sup> *American Paging, Inc. of Virginia*, Notice of Apparent Liability for Forfeiture, 12 FCC Rcd 10417, 10420, para. 11 (Enf. & Cons. Inf. Div., Wireless Tel. Bur. 1997) (quoting *Triad Broadcasting Company*, 96 FCC 2d 1235, 1244 (1984)).

<sup>16</sup> Post inspection corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations. *See Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

<sup>17</sup> *See, e.g., WWC License LLC Licensee of Microwave Stations WPJE660, WPJD256 and WPJA761, Kansas*, 16 FCC Rcd 19490 (2001); *New York Radio Service, WPTM988, Brooklyn, New York*, 19 FCC Rcd 10704 (Enf.Bur. 2004), *Arnold Broadcasting Company, Inc.*, Forfeiture Order, 19 FCC Rcd 14123 (Enf. Bur. 2004).

9. Section 11.35(a) of the Rules requires Broadcast stations to be responsible for ensuring that ... 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.<sup>18</sup> Section 11.11(a) of the Rules states that as of January 1, 1997, low power FM stations are required to have an EAS decoder.<sup>19</sup> During an inspection on October 31, 2008 when the station was in operation, station WRWS-LP did not have an installed EAS decoder. The station's general manager was not aware at the time of the inspection that the station was required to have an installed EAS decoder.<sup>20</sup> There was no evidence that the station had ever installed an EAS decoder at the station, and the station's license was granted February 12, 2008. Based on the evidence before us, we find that Bethune-Cookman willfully and repeatedly violated Section 11.35(s) of the Rules by failing to install the required EAS decoder.

10. In response to the *NAL*, Bethune-Cookman does not deny that it failed to install an EAS decoder, but, nevertheless, requests a reduction of the forfeiture, because it has taken the steps necessary to obtain the equipment needed to remedy the EAS violation. Post-inspection corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations. Therefore, we find no grounds upon which to reduce the forfeiture associated with this violation.

11. In addition, Bethune-Cookman requests reduction or cancellation of the proposed forfeiture, because its station has no previous history of violations, operates in an educational setting, and has an inability to pay the forfeiture. It is established Commission policy that there is no proposed forfeiture exemption or reduction based on the noncommercial status of a station.<sup>21</sup> We have evaluated the station's budgetary information and Bethune-Cookman's financial documentation and conclude a reduction based on inability to pay is not warranted. We have reviewed our records and conclude that the forfeiture should be reduced to \$9,600, based on Bethune-Cookman's history of compliance with the rules.

12. We have examined Bethune-Cookman'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 reduce the forfeiture associated with the unlicensed STL violation to \$4,000 and conclude that a reduction of the proposed total forfeiture to \$9,600 is warranted, based on Bethune-Cookman's history of compliance with the rules.

#### IV. ORDERING CLAUSES

13. 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, Bethune-

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<sup>18</sup> 47 C.F.R. § 11.35(a).

<sup>19</sup> 47 C.F.R. § 11.11(a).

<sup>20</sup> We do not need to address whether this apparent violation was willful, because we find that the apparent violation was repeated. However, "prior knowledge or understanding of the law is unnecessary to a determination of whether a violation existed [and] ... [t]he Commission also does not consider ignorance of the law a mitigating factor." *Profit Enterprises, Inc.*, 8 FCC Rcd 2846, 2846 (1993), *cancelled on other grounds*, 12 FCC Rcd 14999 (1997); *see also Southern California Broadcasting Company*, 6 FCC Rcd 4387 (1991). Moreover, the station's chief engineer stated that he previously tried to convince the station that a decoder was required.

<sup>21</sup> *See Bible Broadcasting Network, Inc.*, Forfeiture Order, 23 FCC Rcd. 8743 (Media Bur. 2008) (rejecting argument that forfeiture should be cancelled or reduced because of noncommercial educational status); *see also Lebanon Educational Broadcasting Foundation*, Memorandum Opinion and Order, 21 FCC Rcd 1442, 1446 (Enf. Bur. 2006) ("Where the Rule is violated, Section 1.80 provides that a monetary forfeiture may be imposed, and there is no exemption or reduction based on the noncommercial status of a station").

Cookman College, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of nine thousand six hundred dollars (\$9,600) for violations of Section 301 of the Communications Act, and Section 11.35(a) of the Rules.<sup>22</sup>

14. 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.<sup>23</sup> 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 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. Bethune-Cookman will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

15. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Bethune-Cookman College, Inc. at its address of record and to its counsel, Kelly V. Parsons, Cobb Cole, 150 Magnolia Avenue, PO Box 2491, Daytona Beach, FL 32115-2491.

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>22</sup> 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 11.35(a).

<sup>23</sup> 47 U.S.C. § 504(a).