

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

In the Matter of)	
)	
Hubbard's Advertising Agency, Inc.)	File Number: EB-09-NF-0125
)	
Licensee of Station WLLL (AM))	NAL/Acct. No.: 201032640001
Lynchburg, Virginia)	
Facility ID # 17409)	FRN: 0003730892

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 6, 2010

Released: May 10, 2010

By the Resident Agent, Norfolk Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Hubbard’s Advertising Agency, Inc., (“Hubbard”), licensee of station WLLL(AM), in Lynchburg, Virginia, apparently willfully and repeatedly violated Sections 11.35(a), 73.1745(a) and 73.3526 of the Commission’s Rules (“Rules”)¹ by failing to maintain operational Emergency Alert System (“EAS”) equipment, exceeding its licensed nighttime operating power, and failing to maintain and make available a public inspection file. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),² that Hubbard is apparently liable for a forfeiture in the amount of twenty-two thousand dollars (\$22,000).

II. BACKGROUND

2. In response to a complaint that Hubbard was not reducing WLLL’s transmitter output power at night, an agent of the Enforcement Bureau’s Norfolk Office (“Norfolk Office”) conducted an on-scene investigation during both daytime and nighttime hours on November 22, 23, and 24, 2009. The agent observed on those days that the station’s field strength did not change between daytime and nighttime. Hubbard’s license authorizes WLLL to broadcast on the frequency 930 KHz with 9000 watts of power during the day and 42 watts at night.

3. On November 24, 2009, the agent inspected the main studio for station WLLL in Lynchburg, Virginia during normal business hours and observed that the station was without a functional EAS system. Hubbard’s owner admitted that the EAS unit had been non-operational for several months and was unable to produce documentation of when the EAS unit became inoperative. The station also had no logs or records of any EAS weekly or monthly tests having been sent. In response to the agent’s request for inspection, Hubbard was unable to produce its public inspection file or any of the required contents of the file.³ Hubbard’s owner admitted that he did not maintain a public inspection file and that he did not know

¹ 47 C.F.R. §§ 11.35(a), 73.1745(a), 73.3526.

² 47 U.S.C. § 503(b).

³ Although it was not located in a public inspection file, Hubbard was able to locate a copy of its station license after 45 minutes of searching.

what documents are required to be in the file.

4. On November 24, 2009, the agent, accompanied by Hubbard's owner, inspected the WLLL transmitter site. Using the direct method (antenna base current times the antenna resistance), the agent calculated, and Hubbard's owner confirmed, a daytime transmitter output power of 5002.4 watts (55% of licensed daytime power). When asked about increasing the power to its licensed daytime power or changing the system to its nighttime mode of operation, the owner said that a transmitter defect prevented WLLL from raising or lowering power to authorized levels. The owner could not provide a date on which the malfunction first occurred. Field strength levels produced by the calculated daytime transmitter output power were less than the levels previously observed by the agent on November 22 and November 23, 2009 and earlier on November 24, 2009. Thus, based on both field strength measurements and the direct method of power measurement, the agent determined that Hubbard operated its system at nighttime with a transmitter power of at least 5002.4 watts, which is more than 10,000% of its authorized nighttime power.

III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.⁴ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁵

6. Every 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 refrain from participation, and that request is approved by the Commission.⁶ The EAS enables the President and state and local governments to provide immediate and emergency communications and information to the general public.⁷ 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.⁸ Required monthly and weekly tests originate from EAS Local or State Primary sources and must be retransmitted by the participating station. As the nation's emergency warning system, the Emergency Alert System is critical to public safety, and we recognize the vital role that broadcasters play in ensuring its success. The Commission takes seriously any violations of the Rules implementing the EAS and expects full compliance from its licensees.

⁴ 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', when used with reference to the commission or omission of any act, 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).

⁵ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁶ 47 C.F.R. §§ 11.11, 11.41.

⁷ 47 C.F.R. §§ 11.1, 11.21.

⁸ 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.

7. Section 11.35(a) of the Rules requires all broadcast stations to ensure that EAS encoders, EAS decoders, and attention signal generating and receiving equipment are installed and operational so that the monitoring and transmitting functions are available during the times the station is in operation.⁹ On November 24, 2009, an agent observed that station WLLL's installed EAS equipment was not operational when the station was in operation. Hubbard's owner admitted that an operational EAS encoder/decoder unit had not been available for several months prior to the inspection on November 24, 2009. Hubbard's owner also admitted that there was no documentation of the exact date the unit became inoperative, but stated plans had been made to repair or replace the unit in the future. In addition, Hubbard was unable to produce any evidence that the EAS unit had ever been operational or that required EAS weekly or monthly tests had ever been sent. Therefore, we find that Hubbard apparently willfully and repeatedly violated Section 11.35(a) of the Rules by failing to ensure that EAS equipment was operational when the station was in operation.

8. Section 73.1745(a) of the Rules requires that, "No broadcast station shall operate at times, or with modes or power, other than those specified and made a part of the license," unless otherwise provided. Based on both field strength measurements and the direct method of power measurement, we find that Hubbard operated its system at nighttime with a transmitter power of at least 5002.4 watts, which is more than 10,000% of its authorized nighttime power, on November 22, 23, and 24, 2009. Therefore, we find that Hubbard apparently willfully and repeatedly violated Section 73.1745(a) of the Rules by operating overpower during nighttime hours on November 22, 23, and 24, 2009.

9. Section 73.3526 of the Rules states that "[e]very permittee or licensee of an AM, FM, TV or a Class A station in the commercial broadcast services shall maintain a public inspection file containing the material" set forth in this section.¹⁰ The public inspection file must be maintained at the main studio of the station,¹¹ and must be available for public inspection at any time during regular business hours.¹² During the November 24, 2009 inspection, WLLL was unable to make its public inspection file or any of the required contents of the file available for inspection. Hubbard's owner admitted that he had never maintained a public inspection file nor did he know what documents were required to be in the file. Based on the evidence before us, we find that Hubbard apparently willfully and repeatedly violated Section 73.3526 of the Rules by failing to maintain a public inspection file. We also find that Hubbard apparently willfully violated Section 73.3526 of the Rules by failing to make available a public inspection file.

10. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("*Forfeiture Policy Statement*"), and Section 1.80 of the Rules, the base forfeiture amounts for not having operational EAS equipment installed, overpower nighttime operations, and not maintaining, and making available, a public inspection file are, respectively, \$8,000, \$4,000 and \$10,000.¹³ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b) (2) (E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.¹⁴ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Hubbard is apparently liable for a \$22,000 forfeiture.

⁹ 47 C.F.R. § 11.35(a).

¹⁰ 47 C.F.R. § 73.3526(a)(2).

¹¹ 47 C.F.R. § 73.3526(b).

¹² 47 C.F.R. § 73.3526(c).

¹³ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹⁴ 47 U.S.C. § 503(b)(2)(E).

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Hubbard Advertising Agency, Inc., is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-two thousand dollars (\$22,000) for violations of Sections 11.35(a), 73.1745(a) and 73.3526 of the Rules.¹⁵

12. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Hubbard Advertising Agency, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the 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 Federal Reserve Bank of New York, 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. 20554.¹⁶ If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. If payment is made, Hubbard Advertising Agency, Inc., will send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

14. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Norfolk Office 1457 Mount Pleasant Rd, Suite 113, Chesapeake, Virginia 23322 and must include the NAL/Acct. No. referenced in the caption.

15. 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 ("GAAP"); 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.

¹⁵ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 11.35(a), 73.1745(a), 73.3526.

¹⁶ See 47 C.F.R. § 1.1914

16. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Hubbard Advertising Agency, Inc., at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Luther Bolden
Resident Agent
Norfolk Office
South Central Region
Enforcement Bureau