

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

In the Matter of)	
)	
Bold Gold Media Group, Inc.)	File Number: EB-09-PA-0286
)	
Licensee of FM station WWRR)	NAL/Acct. No.: 201132400004
Scranton, PA)	
)	FRN: 0014795496
Facility ID Number: 36508)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 28, 2011

Released: January 31, 2011

By the District Director, Philadelphia Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Bold Gold Media Group, Inc. (“Bold Gold”), the licensee of FM Radio Station WWRR in Scranton, Pennsylvania, apparently willfully and repeatedly violated Section 11.35(a) of the Commission’s Rules (“Rules”)¹ by failing to install the required Emergency Alert System (“EAS”) equipment. We conclude that Bold Gold is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On November 24, 2009, in response to a complaint that Station WWRR did not have EAS equipment, an agent from the Enforcement Bureau’s Philadelphia Office (“Philadelphia Office”) conducted an inspection of Station WWRR’s main studio in Scranton, Pennsylvania. During the inspection at the main studio in Scranton, the agent found that Station WWRR did not have any EAS equipment installed. The station engineer also acknowledged the failure to install EAS equipment for Station WWRR at the main studio.

3. The agent also observed that the two co-located and co-owned stations – WICK and WYCK – had operational EAS equipment at the main studio.² The station engineer claimed that an EAS test for Station WWRR could possibly be transmitted by switching the audio source from its studio location in Plains, Pennsylvania to the main studio location in Scranton, Pennsylvania, and then

¹ 47 C.F.R. § 11.35(a).

² Section 11.51(l) of the Rules states that “EAS Participants that are co-owned and co-located with a combined studio or control facility, (such as an AM and FM licensed to the same entity and at the same location or a cable headend serving more than one system) may provide the EAS transmitting requirements contained in this section for the combined stations or systems with one EAS Encoder.” 47 C.F.R. § 11.51(l).

conducting the test using the EAS equipment shared by stations WICK and WYCK.³ At the agent's request, the engineer attempted to conduct a test in that manner and the test appeared to be successful. The station engineer admitted, however, that the station had never conducted any EAS tests for Station WWRR following such procedure. The station engineer also acknowledged that the studio location in Plains did not have any EAS equipment installed at the time.⁴

III. DISCUSSION

4. Section 503(b) of the Communications Act of 1934, as amended ("Act")⁵ 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 there under, 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.⁶ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁷

5. 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.⁸ The EAS enables the President and state and local governments 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

³ Bold Gold has the capability of originating programming from the main studio in Scranton, but originates all of its programming from a studio at the Mohegan Sun Casino at Pocono Downs in Plains, Pennsylvania. Bold Gold uses a Studio Transmitter Link (STL) to transmit the broadcasts for Station WWRR from the Mohegan Sun Casino back to the station's transmitter site in Scranton, Pennsylvania. Bold Gold also is configured with an STL to transmit the broadcasts from Station WWRR's main studio to the station's transmitter site in Scranton, Pennsylvania.

⁴ During the November 24, 2009 inspection at the main studio in Scranton, the agent found a copy of the maintenance log for Station WWRR, dated September 1, 2008, and signed by the station engineer, which stated that "[a]t this time, when broadcasting from Plains PA, WWRR (FM) does not meet the requirements of Part 11 of the FCC rules regarding EAS Encoding, EAS Decoding or EAS Retransmission."

⁵ 47 U.S.C. § 503(b).

⁶ 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, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

⁷ 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."

⁸ 47 C.F.R. §§ 11.11, 11.41.

⁹ 47 C.F.R. §§ 11.1, 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.

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.

6. 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 EAS monitoring and transmitting functions are available during the times a station is in operation.¹¹ The rules do not specify at which studio a station must install its EAS equipment; therefore Bold Gold could have installed EAS equipment for Station WWRR at either the main studio in Scranton or the studio in Plains. During the November 24, 2009, inspection at Station WWRR's main studio in Scranton, the Philadelphia Office agent found that Station WWRR did not have any EAS equipment installed. Bold Gold also acknowledged that it did not have any EAS equipment installed at its studio in Plains. Indeed, there is no evidence that Station WWRR had any EAS equipment for Station WWRR installed at either location from the time Bold Gold purchased the station in 2006 until February 2010.¹² Accordingly, based on the evidence before us, we find that Bold Gold apparently willfully and repeatedly violated Section 11.35(a) of the Rules by failing to install the required EAS equipment for Station WWRR.

7. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture for EAS equipment that is not installed or operational is \$8,000.¹³ 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, any history of prior offenses, ability to pay, and other such matters as justice may require.¹⁴ Because Bold Gold failed to install EAS equipment for Station WWRR from the time it purchased the station in 2006 until February 2010, we find that an upward adjustment of \$2,000 is warranted. Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that Bold Gold is apparently liable for a forfeiture in the amount of \$10,000.

¹¹ 47 C.F.R. § 11.35(a).

¹² Bold Gold states that, subsequent to the inspection, it installed EAS equipment for Station WWRR at the Plains studio and that it successfully transmitted an EAS test on February 4, 2010. See Letters from Robert VanDerheyden, Chief Operating Officer, Bold Gold Media Group, to Philadelphia Office, dated November 27, 2009, and February 6, 2010. We note that it is irrelevant that Bold Gold was able to conduct an EAS test for Station WWRR by switching the composite audio source from the Plains location to the Scranton main studio using Stations WICK and WYCK's EAS equipment during the November 24, 2009 inspection because, by its own admission, Bold Gold had not previously used such a procedure, and it was therefore not operational as required by the Rules. Additionally, using such a procedure would not bring Bold Gold into compliance with our EAS Rules. Stations must have the capability to monitor their local primary sources for unscheduled emergency messages and to retransmit such messages on an emergency basis when necessary. If an actual and unscheduled EAS message was received, someone would need to be present at the Station WWRR studio (1) to hear that an EAS message was being received by Stations WICK and WYCK, (2) to switch the audio source from the studio location in Plains, Pennsylvania to the main studio location in Scranton, Pennsylvania, (3) to interrupt normal programming, and (4) to conduct the test using the EAS equipment shared by Stations WICK and WYCK. Moreover, this procedure could not be followed without undermining the ability of co-owned Stations WICK and WYCK to comply with their EAS requirements.

¹³ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) ("*Forfeiture Policy Statement*"), 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

8. 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, Bold Gold Media Group is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violation of Section 11.35(a) of the Rules.¹⁵

9. **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, Bold Gold Media Group, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. 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 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. 20554.¹⁶ If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. Bold Gold shall also send electronic notification to NER-Response@fcc.gov on the date said payment is made.

11. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80(f)(3) and 1.16 of the Rules. The written statement, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, Philadelphia Office, One Oxford Valley Building, Suite 404, 2300 East Lincoln Highway, Langhorne, Pennsylvania 19047 and must include the NAL/Acct. No. referenced in the caption. The statement should also be emailed to NER-Response@fcc.gov.

12. 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).

¹⁶ See 47 C.F.R. §1.1914.

13. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and by regular mail, to Bold Gold Media Group, at 1049 North Sekol Road, Scranton, Pennsylvania, 18504.

FEDERAL COMMUNICATIONS COMMISSION

Gene J Stanbro
District Director
Philadelphia Office
Northeast Region
Enforcement Bureau