

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

In the Matter of	)	
	)	
North County Broadcasting Corporation	)	File No.: EB-10-SD-0028
Licensee of Station KFSD	)	NAL/Acct. No.: 201132940002
Escondido, California	)	
Facility ID #49205	)	FRN: 0003770757
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted:** January 11, 2011

**Released:** January 13, 2011

By the Acting District Director, San Diego Office, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that North County Broadcasting Corporation (“NCBC”), the licensee of AM broadcast station KFSD(AM) in Escondido, California, apparently willfully and repeatedly violated Section 11.35 of the Commission’s Rules (“Rules”)<sup>1</sup> by failing to ensure the operational readiness of Station KFSD’s Emergency Alert System (“EAS”) equipment. We conclude that NCBC is apparently liable for a forfeiture in the amount of six thousand dollars (\$6,000).

**II. BACKGROUND**

2. On March 18, 2010, agents from the Enforcement Bureau’s San Diego Office conducted an inspection of Station KFSD’s main studio, located at 1835 Aston Avenue, Carlsbad, California. The agents observed that Station KFSD’s EAS equipment was shared with the licensee’s co-located Station KCEO(AM). The agents also observed that Station KFSD’s EAS equipment was not operating properly at the time of inspection. Specifically, the EAS equipment was capable of transmitting a required weekly test (“RWT”) for Station KCEO, but it was not capable of transmitting a RWT for Station KFSD. A review of the EAS logs for Stations KCEO and KFSD indicated that in December 2009, and again in February 2010, Station KFSD’s chief engineer was contacted by the operator on duty at Station KFSD concerning problems with Station KFSD’s EAS equipment and its failure to re-transmit the required monthly tests (“RMTs”). During the inspection, an NCBC staff person acknowledged that Station KFSD’s EAS equipment connection had been experiencing problems sending RWTs and RMTs since early December 2009.

3. On March 31, 2010, the San Diego Office sent a letter of inquiry (“LOI”) to NCBC concerning the operational status of Station KFSD’s EAS equipment.<sup>2</sup> In its response, NCBC

<sup>1</sup> 47 C.F.R. § 11.35.

<sup>2</sup> See Letter of Inquiry from William R. Zears, Jr., District Director, San Diego Office, Western Region, Enforcement Bureau, to North County Broadcasting Corporation, dated March 31, 2010.

acknowledged that Station KFSD's EAS equipment, specifically the audio link, was not functioning properly from December 2009 until April 8, 2010.<sup>3</sup> NCBC explained that when the operator on duty contacted the Station KFSD chief engineer in December about the failure of the audio link, the chief engineer initially believed that the station's EAS equipment problems were intermittent. When notified again in February by Station KFSD staff of EAS failures, the chief engineer performed a complete inspection of the equipment and exchanged controlling links between pieces of the equipment. The next week, in early March, the chief engineer inspected the wiring between the pieces of equipment and the audio paths, as well as tested recently purchased pieces of equipment in an attempt to resolve the continuing EAS failures.<sup>4</sup> NCBC also stated that after the San Diego Office's inspection on March 18, 2010, the engineer submitted the equipment for repair and it was determined that a power supply filter capacitor had "finally dried up" and had gone from causing intermittent failure to total failure of the audio link.<sup>5</sup> NCBC also stated that the equipment was repaired as of April 8, 2010.<sup>6</sup>

### III. DISCUSSION

4. Section 503(b) of the Communications Act of 1934, as amended ("the Act"),<sup>7</sup> provides that any person who willfully fails to comply substantially with the terms and conditions of any license, or willfully 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) has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>8</sup> The term "repeated" means the commission or omission of such act more than once or for more than one day.<sup>9</sup>

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.<sup>10</sup> The EAS enables the President and state and local governments to provide immediate and emergency communications and information to the general public.<sup>11</sup> State and local area plans identify local primary sources responsible for coordinating carriage of

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<sup>3</sup> See Letter from Susan E. Burke, Secretary, North County Broadcast Corporation, to William R. Zears, Jr., District Director, San Diego Office, Western Region, Enforcement Bureau, dated April 19, 2010 ("*LOI Response*").

<sup>4</sup> *LOI Response* at 2.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> 47 U.S.C. § 503(b).

<sup>8</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', 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).

<sup>9</sup> 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."

<sup>10</sup> 47 C.F.R. §§ 11.11, 11.41.

<sup>11</sup> 47 C.F.R. §§ 11.1, 11.21.

common emergency messages from sources such as the National Weather Service or local emergency management officials.<sup>12</sup> 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.

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 are installed and operational so that the monitoring and transmitting functions are available during the times the station is in operation.<sup>13</sup> 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.<sup>14</sup> Furthermore, Section 11.61(a)(1) and (2) of the Rules require broadcast stations to (a) receive monthly EAS tests from designated local primary EAS sources and retransmit the monthly test within 60 minutes of its receipt, and (b) conduct tests of the EAS header and End of Message codes at least once a week at random days and times.<sup>15</sup> The requirement that stations monitor, receive, and retransmit the required EAS tests ensures the operational integrity of the EAS system in the event of an actual disaster. Accordingly, appropriate entries must be made in the broadcast station log as specified in Sections 73.1820 and 73.1840 of the Rules, indicating reasons why any tests were not received or transmitted.<sup>16</sup>

7. As discussed above, a March 18, 2010, Bureau inspection of Station KFSD's EAS equipment revealed that the equipment was not operational. Specifically, the audio link for Station KFSD's EAS equipment was not functioning, and this prohibited the station from transmitting a RWT and retransmitting a RMT. The Bureau's investigation further revealed that Station KFSD's EAS equipment had failed to function properly since December 2009, and that effective repairs were not made until April 2010.<sup>17</sup> Thus, based on the evidence before us, we find that NCBC apparently willfully and repeatedly violated Section 11.35 of the Rules by failing to ensure the operational readiness of Station KFSD's EAS equipment.

8. Pursuant to the Commission's *Forfeiture Policy Statement*<sup>18</sup> and Section 1.80 of the Rules, the base forfeiture for EAS equipment that is not installed or operational is \$8,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section

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<sup>12</sup> 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.

<sup>13</sup> 47 C.F.R. § 11.35.

<sup>14</sup> 47 C.F.R. § 11.35(a) - (b).

<sup>15</sup> 47 C.F.R. § 11.61(a)(1) - (2). The required monthly and weekly tests must conform to the procedures in the EAS Operational Handbook. *See also, Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, 17 FCC Rcd 4055 (2002).

<sup>16</sup> 47 C.F.R. §§ 73.1820, 73.1840.

<sup>17</sup> *LOI Response* at 2.

<sup>18</sup> *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.

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.<sup>19</sup> As discussed above, NCBC initiated good faith efforts, albeit unsuccessfully, to troubleshoot the EAS equipment failures prior to the Bureau's inspection. Therefore, pursuant to established precedent, we find that a reduction of the proposed forfeiture is warranted.<sup>20</sup> However, we caution NCBC that future violations of the Rules may subject it to more severe enforcement penalties. Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that North County Broadcasting Corporation is apparently liable for a forfeiture in the amount of \$6,000.

#### IV. ORDERING CLAUSES

9. 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 of the Commission's Rules, North County Broadcasting Corporation is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of six thousand dollars (\$6,000) for apparently willfully and repeatedly violating Section 11.35 of the Commission's Rules.<sup>21</sup>

10. **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, North County Broadcasting Corporation **SHALL PAY** the full amount of the proposed forfeiture, or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. 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 NAL/Acct. No. and FRN No. 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 if block number 23A (call sign/other ID), and enter the letters "FORF" in block 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, 445 12<sup>th</sup> St., S.W., Room 1-A625, Washington, DC 20554.<sup>22</sup> If you have any questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov). North County Broadcasting Corporation shall also send electronic notification on the date said payment is made to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov)

12. 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

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<sup>19</sup> 47 C.F.R. § 503(b)(2)(E).

<sup>20</sup> See, e.g., *Sutro Corporation*, Memorandum Opinion and Order, 19 FCC Rcd 15274, 15277 (2004) (stating that the Commission has "generally provided reductions based on the good faith corrective efforts of a violator when those corrective efforts were taken prior to Commission notification of the violation"); *Radio One Licenses, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 20408 (EB 2002), *review granted in part and denied in part*, 18 FCC Rcd 15964 (2003) (reductions based on good faith efforts to comply generally involve situations where violators demonstrate that they initiated measures to correct or remedy violations prior to a Commission inspection or investigation).

<sup>21</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80, 11.35.

<sup>22</sup> See 47 C.F.R. § 1.1914.

Sections 1.80(f)(3) and 1.16 of the Rules. The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, San Diego Office, 4542 Ruffner Street, Suite 370, San Diego, California, 92111, and must include the NAL/Acct. No. referenced in the caption. The statement shall also be emailed to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov).

13. 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.

14. **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 regular mail, to North County Broadcasting Corporation, 1835 Aston Avenue, Carlsbad, CA, 92008.

FEDERAL COMMUNICATIONS COMMISSION

James T. Lyon  
Acting District Director  
San Diego Office  
Western Region  
Enforcement Bureau