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

In the Matter of	)	
	)	
John F. Warmath	)	File Number: EB-10-AT-0124
	)	
Licensee of Station WIRJ(AM)	)	NAL/Acct. No.: 201132480002
Humboldt, TN	)	
Facility ID # 15796	)	FRN: 0014425979

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: May 17, 2011 Released: May 17, 2011

By the District Director, Atlanta Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order ("*NAL*"), we find that John F. Warmath ("Mr. Warmath"), licensee of station WIRJ(AM), Humboldt, TN, apparently willfully and repeatedly violated sections 73.49, 11.35, and 73.3526 of the Commission's Rules ("Rules")[1] by failing to maintain: (1) an enclosed fence around the base of the station's AM antenna; (2) Emergency Alert System ("EAS") equipment; and (3) a public inspection file. We conclude that Mr. Warmath is apparently liable for a forfeiture in the amount of twenty-five thousand dollars ($25,000).

II. BACKGROUND

2. On October 7, 2010, in response to a complaint, agents of the Enforcement Bureau's Atlanta Office ("Atlanta Office"), accompanied by the station's acting chief operator, inspected radio station WIRJ(AM) in Humboldt, TN. The agents found that there was no EAS equipment installed at the station. Both Mr. Warmath, via telephone, and the acting chief operator admitted that the EAS equipment had been missing for more than 60 days.[2] The agents also observed that there was no fence surrounding the base of the station's antenna structure and no perimeter property fence. Neither Mr. Warmath nor the acting chief operator knew when the base fence was removed, but the acting chief operator estimated that the fence had been removed about a year prior to the inspection. In addition, the agents found that Station WIRJ(AM) had no public inspection file. Mr. Warmath and the acting chief operator stated that they had not filed any documents in the public inspection file in over two years, and that they were unaware of any other person maintaining a public inspection file for Station WIRJ(AM) during that period.

[1] 47 C.F.R. §§ 73.49, 73.3526, 11.35

[2] A contract engineer for the station later estimated that the EAS had been removed about a year prior to the inspection, because it had been damaged by lightning.

III. DISCUSSION

3. Section 503(b) of the Communications Act of 1934, as amended ("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.[3] 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]

4. Section 73.49 states that "[a]ntenna towers having radio frequency potential at the base … must be enclosed within effective locked fences or other enclosures."[6] On October 7, 2010, Station WIRJ(AM)'s antenna structure had radio frequency potential at the base. On that date, agents from the Atlanta Office observed that there was no fence surrounding the base of the antenna tower or the perimeter property for Station WIRJ(AM). Although unaware of when the fence was removed, Mr. Warmath and the station's acting chief operator admitted that the fence had been missing for more than one day. Thus, based on the evidence before us, we find that Mr. Warmath apparently willfully and repeatedly violated section 73.49 of the Rules by failing to maintain an AM antenna base fence.

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.[7] The EAS enables the President and state and local governments to provide immediate and emergency communications and information to the general public.[8] 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.[9] 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(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

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[3] 47 U.S.C. § 503(b).

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

[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. § 73.49.

[7] 47 C.F.R. §§ 11.11, 11.41.

[8] 47 C.F.R. §§ 11.1, 11.21.

[9] 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.

the monitoring and transmitting functions are available during the times the station is in operation.[10] On October 7, 2010, agents from the Atlanta Office observed that Station WIRJ(AM) had no EAS equipment. Mr. Warmath and the acting chief operator admitted that the equipment had been missing for more than 60 days. Accordingly, based on the evidence before us, we find that Mr. Warmath apparently willfully and repeatedly violated section 11.35 of the Rules by failing to install EAS equipment.

7. Section 73.3526(a)(2) of the Rules states that, "Every permittee or licensee of an AM, FM, TV or class A TV station in the commercial broadcast services shall maintain a public inspection file containing the material" set forth in that section.[11] Section 73.3526(b) of the Rules requires the public inspection file be maintained at the station's main studio,[12] and section 73.3526(c)(1) of the Rules requires the file be available for public inspection at any time during regular business hours.[13] On October 7, 2010, in response to a request to inspect the public inspection file during regular business hours, Station WIRJ(AM) was unable to produce a public inspection file or any of its required contents. Mr. Warmath admitted that no filings had been made to the file for approximately two years. Based on the evidence before us, we find that Mr. Warmath apparently willfully violated section 73.3526 of the Rules by failing to make available a public inspection file and apparently willfully and repeatedly violated section 73.3526 of the Rules by failing to maintain a public inspection file for Station WIRJ(AM).

8. Pursuant to the *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount for AM tower fencing violations is $7,000, for EAS equipment that is not installed or operational is $8,000, and for violation of the public file rules is $10,000.[14] 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.[15] Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Warmath is apparently liable for a total forfeiture of $25,000, consisting of the following elements: $7,000 for failure to maintain an AM antenna base fence, $8,000 for failure to install EAS equipment, and $10,000 for failure to maintain and make available a complete public inspection file.

9. We direct Mr. Warmath to submit a statement signed under penalty of perjury that (1) Station WIRJ(AM) currently has installed operational EAS equipment; (2) Station WIRJ(AM) has a complete public inspection file in its main studio; and (3) there is an effective locked fence around Station WIRJ(AM)'s antenna structure. If Station WIRJ(AM) has not come into compliance with any of the above requirements, Mr. Warmath shall submit an explanation for the delay and a timetable for when compliance will be achieved. This statement must be provided to the Atlanta Office at the address listed in paragraph 14 within fifteen days of the release date of this Notice of Apparent Liability for Forfeiture and Order. We caution Mr. Warmath that licensees are expected to comply with the Rules and further violations may result in additional enforcement action.

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[10] 47 C.F.R. § 11.35(a).

[11] 47 C.F.R. § 73.3526(a)(2).

[12] 47 C.F.R. § 73.3526(b).

[13] 47 C.F.R. § 73.3526(c)(1).

[14] *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.

[15] 47 U.S.C. § 503(b)(2)(E).

IV. ORDERING CLAUSES

10. Accordingly**, IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.204, 0.311, 0.314 and 1.80 of the Commission's Rules, John F. Warmath is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-five thousand dollars ($25,000) for violations of sections 73.49, 11.35, and 73.3526 of the Rules.[16]

11. **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 and Order, John F. Warmath **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. **IT IS FURTHER ORDERED** that John F. Warmath **SHALL SUBMIT** a statement as described in paragraph 9 to the Atlanta Office within fifteen days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

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 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.[8] If you have questions regarding payment matters, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. If payment is made, Mr. Warmath will send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

14. 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 must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Atlanta Office, 3575 Koger Blvd., Suite 320, Duluth, GA 30096 and must include the NAL/Acct. No. referenced in the caption. The statement should also be mailed to SCR-Response@fcc.gov.

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.

16. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for

[16] 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 73.49, 11.35, 73.3526.

[8] *See* 47 C.F.R. § 1.1914.

Forfeiture and Order shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to John F. Warmath at 314 North 22nd Street, Humboldt, TN 38343.

FEDERAL COMMUNICATIONS COMMISSION

Douglas G. Miller
District Director
Atlanta Office
South Central Region
Enforcement Bureau