

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

In the Matter of)	
)	
Bravo Broadcasting Company, Inc.)	File No.: EB-11-HU-0098
)	NAL/Acct. No.: 201232540007
Licensee of Station KIRT)	FRN: 0008720591
Mission, Texas)	Facility ID No.: 56474
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: July 12, 2012

Released: July 12, 2012

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

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Bravo Broadcasting Company, Inc. (BBC), licensee of Station KIRT (Station), in Mission, Texas, apparently willfully and repeatedly violated Section 11.35(a) of the Commission's rules (Rules)¹ by failing to install and maintain operational Emergency Alert System (EAS) equipment. We conclude that BBC is apparently liable for a forfeiture in the amount of eight thousand dollars (\$8,000). In addition, we direct BBC to submit, no later than thirty (30) calendar days from the date of this NAL, a statement signed under penalty of perjury stating that Station KIRT's EAS equipment has been installed and is operational.

II. BACKGROUND

2. On November 16, 2011, in response to a complaint that Station KIRT did not have operational EAS equipment, an agent from the Enforcement Bureau's Houston Office (Houston Office) inspected the Station and observed no EAS equipment installed at its main studio. The Station also did not have any EAS logs or any evidence that it ever had operational EAS equipment. On February 7, 2012, the Houston Office issued a letter of inquiry (LOI) to BBC, regarding its EAS equipment.² In its response to the LOI, BBC admitted that Station KIRT had been without operational EAS equipment since August 2009, and stated that it had purchased new EAS equipment on March 20, 2012.³

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

¹ 47 C.F.R. § 11.35(a).

² See Letter from Lee R. Browning, Resident Agent, Houston Office, South Central Region, Enforcement Bureau, to Bravo Broadcasting Company, Inc. (dated Feb. 7, 2012) (on file in EB-11-HU-0098).

³ See Letter from Daniel A. Kirkpatrick, Counsel for Bravo Broadcasting Company, Inc., to Lee R. Browning, Resident Agent, Houston Office, South Central Region, Enforcement Bureau at 3-4 (dated Mar. 21, 2012) (on file in EB-11-HU-0098).

order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁴ Section 312(f)(1) of the Act defines “willful” as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁵ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,⁶ and the Commission has so interpreted the term in the Section 503(b) context.⁷ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁸ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁹

A. Failure to Install and Maintain Operational Emergency Alert System Equipment

4. 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.¹⁰ The EAS enables the President and state and local governments to provide immediate communications and information to the general public.¹¹ State and local area plans identify local primary sources responsible for coordinating carriage of common emergency messages from the sources such as the National Weather Service or local emergency management officials.¹² 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 EAS 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.

5. 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 used as part of the EAS are installed and operational so that the monitoring and transmitting functions are available during the times the stations

⁴ 47 U.S.C. § 503(b).

⁵ 47 U.S.C. § 312(f)(1).

⁶ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in Section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission’s application of those terms . . .”).

⁷ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

⁸ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

⁹ 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.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

¹⁰ 47 C.F.R. §§ 11.11, 11.19, 11.41.

¹¹ 47 C.F.R. §§ 11.1, 11.21.

¹² 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. 47 C.F.R. § 11.21.

are in operation.¹³ On November 16, 2011, an agent from the Houston Office inspected Station KIRT and observed that the station did not have any installed EAS equipment. Further, the Station did not have any EAS logs or any evidence that it ever had operational EAS equipment. BBC also admitted that Station KIRT had been without EAS equipment since August 2009. Based on the evidence before us, we find that BBC apparently willfully and repeatedly violated Section 11.35(a) of the Rules by failing to install and maintain operational EAS equipment.

B. Proposed Forfeiture Amount and Reporting Requirement

6. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for failing to have operational EAS equipment installed is \$8,000.¹⁴ 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, any 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 BBC is apparently liable for a total forfeiture of \$8,000 for failing to install and maintain operational EAS equipment, which is consistent with other recent cases involving similar facts.¹⁶

7. We direct BBC to submit a written statement, pursuant to Section 1.16 of the Rules, signed under penalty of perjury by an officer or director of BBC, stating that EAS equipment has been installed and is operational, and that Station KIRT now complies with the Commission's EAS rules. This statement must be provided to the Houston Office at the address listed in paragraph 10 within thirty (30) calendar days of the release date of this NAL.

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, 0.204, 0.311, 0.314 and 1.80 of the Commission's rules, Bravo Broadcasting Company, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of eight thousand dollars (\$8,000) for violation of Section 11.35(a) of the Commission's rules.¹⁷

9. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Bravo Broadcasting Company, 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 47 C.F.R. § 11.35(a).

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*), recons. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹⁵ 47 U.S.C. § 503(b)(2)(E).

¹⁶ See, e.g., *Upper Peninsula Communications Inc.*, Forfeiture Order, 27 FCC Rcd 5170 (Enf. Bur. 2012) (imposing \$8,000 forfeiture for failing to install EAS equipment); *Walter M. Czura*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 2285 (Enf. Bur. 2012) (proposing \$8,000 forfeiture for failing to maintain functioning EAS equipment); *SCI Cable, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 12927 (Enf. Bur. 2011) (proposing \$8,000 forfeiture for failing to install EAS equipment); *Spirit Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 10212 (Enf. Bur. 2011) (proposing \$8,000 forfeiture for failing to install EAS equipment).

¹⁷ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 11.35(a).

10. **IT IS FURTHER ORDERED** that Bravo Broadcasting Company, Inc. **SHALL SUBMIT** a statement as described in paragraph 7 to the Houston Office within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order. The statement must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Houston Office, 9597 Jones Road #362, Houston, Texas, 77065. Bravo Broadcasting Company, Inc. shall also e-mail the written statement to SCR-Response@fcc.gov.

11. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Bravo Broadcasting Company, Inc. shall send electronic notification of payment to SCR-Response@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁸ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

12. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁹ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

13. 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.²⁰ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Houston Office, 9597 Jones Road #362, Houston, Texas, 77065 and include the NAL/Acct. No. referenced in the caption. Bravo Broadcasting Company, Inc. also shall email the written response to SCR-Response@fcc.gov.

¹⁸ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹⁹ See 47 C.F.R. § 1.1914.

²⁰ 47 C.F.R. §§ 1.16, 1.80(f)(3).

14. 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. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and First Class Mail, to Bravo Broadcasting Company, Inc. at P.O. Box 2200, Mission, Texas 78573-0037, and to its counsel, Daniel A. Kirkpatrick, Fletcher, Heald & Hildreth, 1300 N 17th St., 11th Floor, Arlington, VA 22209-3873.

FEDERAL COMMUNICATIONS COMMISSION

Lee R. Browning
Resident Agent
Houston Office
South Central Region
Enforcement Bureau