

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

In the Matter of)	
)	
Pittman Broadcasting Services, LLC)	File No.: EB-FIELDSCR-12-00002104
)	NAL/Acct. No.: 201332620002
Licensee of Station KVOL-AM,)	FRN: 0004330825
Lafayette, LA)	Facility ID No.: 9415
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: May 30, 2013

Released: May 30, 2013

By the Deputy Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Pittman Broadcasting Services, LLC (Pittman), licensee of Station KVOL-AM (Station) in Lafayette, Louisiana, apparently willfully and repeatedly violated Sections 11.35(a) and 73.1745(a) of the Commission’s rules (Rules),¹ by failing to (1) maintain operational Emergency Alert System (EAS) equipment and logs, and (2) operate its Station within authorized power limitations. We conclude that Pittman is apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000). In addition, no later than thirty (30) calendar days from the release date of this NAL, Pittman must submit a statement signed under penalty of perjury stating that Station KVOL-AM is in full compliance with the Commission’s EAS requirements and is operating consistent with its license.

II. BACKGROUND

2. Station KVOL-AM’s license authorizes it to operate with 5 kilowatts during the day and 1.08 kilowatts in a directional pattern at night.² On April 25 and April 26, 2012, in response to a complaint, an agent from the Enforcement Bureau’s New Orleans Office (New Orleans Office) measured the field strength of Station KVOL-AM’s transmissions during the day and at night and observed no change in field strength between day and night.³

3. On April 27, 2012, an agent from the New Orleans Office, accompanied by the Station’s production director and later the general manager, inspected Station KVOL-AM’s main studio in Lafayette, Louisiana, and observed that the Station’s EAS equipment was not connected to a power source or any transmitting or receiving equipment. The Station’s general manager and production director admitted that the Station had been without operational EAS since the Station changed main

¹ 47 C.F.R. §§ 11.35(a), 73.1745(a).

² See License File No. BR-20120131ALZ.

³ On April 25, 2012, the field strength was measured at 110 mV/m at 3:45 P.M. and 8:20 P.M. On April 26, 2012, the field strength was measured at 100 mV/m at 4:23 P.M. and 7:23 P.M.

studio locations during the summer of 2011. The Station also did not have any EAS logs, documenting when the last EAS tests were transmitted or received.

4. On May 1, 2012, an agent from the New Orleans Office, accompanied by the Station's contract engineer, inspected Station KVOL-AM's transmitter site. The agent made field strength measurements with the transmitter in daytime mode and nighttime mode from approximately the same location as on April 25 and April 26, 2012.⁴ The measured field strengths of Station KVOL-AM's transmissions on April 25 and 26, 2012, were approximately the same value as the field strength measurement taken when the transmitter was in full-power daytime mode and more than two times the value of nighttime mode, thereby confirming Station KVOL-AM's overpower operations at night. The Station's contract engineer also admitted that the Station had been without operational EAS equipment since the main studio was moved in the summer of 2011, and that the Station was unable to monitor and control its transmission system.

III. DISCUSSION

5. 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.⁵ 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.⁶ 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,⁷ and the Commission has so interpreted the term in the Section 503(b) context.⁸ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁹ The term "repeated" means the commission or omission of such act more than once or for more than one day.¹⁰

⁴ The measured field strength was 92 mV/m in daytime mode and 43 mV/m in nighttime mode. If the Station switched from daytime to nighttime mode on April 25 and 26, 2012, the agents should have observed a corresponding decrease in field strength.

⁵ 47 U.S.C. § 503(b).

⁶ 47 U.S.C. § 312(f)(1).

⁷ 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").

⁸ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

⁹ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, ¶ 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator's repeated signal leakage).

¹⁰ 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, ¶ 9.

A. Failure to Maintain Operational EAS Equipment and Logs

6. Every broadcast station is part of the nationwide EAS network and is categorized as a participating national EAS source.¹¹ The EAS enables the President and state and local governments to provide immediate communications and information to the general public.¹² 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.¹³ 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.

7. Section 11.35(a) of the Rules states that EAS Participants are responsible for ensuring that EAS Encoders, EAS Decoders, and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the stations and systems are in operation.¹⁴ Section 11.35(a) also requires EAS participants to record in station logs the reasons why any EAS tests were not received.¹⁵ On April 27, 2012, an agent from the New Orleans Office observed that Station KVOL-AM did not have operational EAS equipment when the Station was on the air, and did not have any EAS logs that documented when the equipment was last operational. The Station's general manager, production director, and contract engineer all confirmed that the Station had been without operational EAS equipment since the summer of 2011. Station KVOL-AM, however, maintained no logs or records explaining why the Station failed to receive any EAS tests since the summer of 2011.¹⁶ Therefore, based on the evidence before us, we find that Pittman apparently willfully and repeatedly violated Section 11.35(a) of the Rules by failing to maintain operational EAS equipment and logs.

B. Failure to Operate within Parameters of License

8. Section 73.1745(a) of the Rules states that “[n]o broadcast station shall operate at times, or with modes or power, other than those specified and made a part of the license”¹⁷ On April 25 and April 26, 2012, an agent from the New Orleans Office observed Station KVOL-AM operate with daytime power at night. Based on the evidence before us, we find that Pittman apparently willfully and repeatedly violated Section 73.1745(a) of the Rules by failing to operate its Station within authorized power limits.

¹¹ 47 C.F.R. §§ 11.11, 11.41.

¹² 47 C.F.R. §§ 11.1, 11.21.

¹³ 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.

¹⁴ 47 C.F.R. § 11.35(a). *See also* 47 C.F.R. § 73.1820(a)(1)(iii) (requiring licensees to create an entry for each test and activation of the EAS in the station log or in a special EAS log). If Station KVOL-AM had operational EAS equipment prior to the summer of 2011, it failed to log any successful EAS tests.

¹⁵ 47 C.F.R. § 11.35(a). *See also* 47 C.F.R. § 11.35(b) (requiring licensees to record when defective EAS equipment is removed from service).

¹⁶ For example, Station KVOL-AM could have noted in its station log that it failed to receive EAS tests after the summer of 2011 because its EAS equipment was not installed.

¹⁷ 47 C.F.R. § 73.1745(a).

C. Proposed Forfeiture and Reporting Requirement

9. 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 is \$8,000, and the base forfeiture amount for exceeding power limits is \$4,000.¹⁸ 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.¹⁹ In doing so, we find that Pittman's prior overpower operations²⁰ warrants an upward adjustment of \$2,000.²¹ Furthermore, we find that Pittman's failure to maintain any EAS logs warrants an upward adjustment of \$1,000.²² Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Pittman is apparently liable for a total forfeiture of \$15,000, consisting of the following: \$9,000 for failing to maintain operational EAS equipment and logs, and \$6,000 for the Station's overpower operations.

10. We direct Pittman to submit a written statement, pursuant to Section 1.16 of the Rules,²³ signed under penalty of perjury by an officer or director of Pittman, stating that (1) the Station is currently reducing transmitter power and operating in a directional pattern at night as required by its license, and (2) the EAS monitoring and transmitting functions are available when the Station is in operation. This statement must be provided to the New Orleans Office at the address listed in paragraph 13, below, within thirty (30) calendar days of the release date of this NAL.

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, 0.204, 0.311, 0.314, and 1.80 of the Commission's rules, Pittman Broadcasting Services, LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fifteen thousand dollars (\$15,000) for violations of Sections 11.35(a) and 73.1745(a) of the Commission's rules.²⁴

12. **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

¹⁸ *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.

¹⁹ 47 U.S.C. § 503(b)(2)(E).

²⁰ See *Pittman Broadcasting Services, LLC*, Forfeiture Order, 23 FCC Rcd 2742 (Enf. Bur. 2008) (violated Section 73.1745(a) of the Rules by operating overpower at night) (forfeiture paid).

²¹ See, e.g., *Donald D. Coss*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 16924 (Enf. Bur. 2010) (upwardly adjusting forfeiture due to prior violation of rule at issue); *CBS Radio East Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 1293 (Enf. Bur. 2009) (upwardly adjusting forfeiture due to prior violation of rule at issue); *Union Broadcasting, Inc.*, Forfeiture Order, 19 FCC Rcd 18588 (Enf. Bur. 2004) (upholding upward adjustment due to prior Notice of Violation citing multiple violations of the rule at issue).

²² See *Iglesia Cristiana Ebenezer of Greenville, Texas*, Notice of Apparent Liability for Forfeiture and Order, DA 13-1004, 2013 WL 1881507 (Enf. Bur. May 6, 2013) (imposing \$1,000 upward adjustment for failure to maintain EAS logs).

²³ 47 C.F.R. § 1.16.

²⁴ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204(b), 0.311, 0.314, 1.80, 11.35(a), 73.1745(a).

Order, Pittman Broadcasting Services, LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. **IT IS FURTHER ORDERED** that Pittman Broadcasting Services, LLC **SHALL SUBMIT** a statement as described in paragraph 10, above, to the New Orleans 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, New Orleans Office, 2424 Edenborn Avenue, Suite 460, Metairie, LA 70001. Pittman Broadcasting Services, LLC shall also e-mail the written statement to SCR-Response@fcc.gov.

14. 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. Pittman Broadcasting Services, LLC will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁵ 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.

15. Any request for making full payment over time 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. 20554.²⁶ 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.

16. 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 1.16 and 1.80(f)(3) of the Rules.²⁷ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, New Orleans Office, 2424 Edenborn Avenue,

²⁵ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁶ See 47 C.F.R. § 1.1914.

²⁷ 47 C.F.R. §§ 1.16, 1.80(f)(3).

Suite 460, Metairie, LA 70001, and include the NAL/Acct. No. referenced in the caption. Pittman Broadcasting Services, LLC also shall e-mail the written response to SCR-Response@fcc.gov.

17. 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 principles (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.

18. **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 Pittman Broadcasting Services, LLC at 307 S. Jefferson Avenue, Covington, LA 70433.

FEDERAL COMMUNICATIONS COMMISSION

Loyd Perry
Deputy Regional Director
South Central Region
Enforcement Bureau