

**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(AM))	NAL/Acct. No.: 201132940002
Escondido, California)	FRN: 0003770757
)	Facility ID No.: 49205
)	

FORFEITURE ORDER

Adopted: February 14, 2013

Released: February 15, 2013

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of four thousand, eight hundred dollars (\$4,800) to North County Broadcasting Corporation (NCBC), licensee of Station KFSD(AM) in Escondido, California, for willfully and repeatedly violating Section 11.35 of the Commission's rules (Rules).¹ The noted violations involve NCBC's failure to ensure the operational readiness of Station KFSD(AM)'s Emergency Alert System (EAS) equipment.

II. BACKGROUND

2. On March 18, 2010, agents from the Enforcement Bureau's San Diego Office (San Diego Office) conducted an inspection of Station KFSD(AM)'s main studio, located at 1835 Aston Avenue, Carlsbad, California, and determined that Station KFSD(AM)'s EAS equipment was not operating properly. Specifically, the EAS equipment was capable of transmitting a required weekly test (RWT) for NCBC's co-located Station KCEO(AM), but it was not capable of transmitting a RWT for Station KFSD(AM).² During the inspection, an NCBC staff person acknowledged that Station KFSD(AM)'s EAS equipment connection had been experiencing problems sending RWTs and the required monthly tests (RMTs) since early December 2009. A review of the EAS logs for Station KFSD(AM) corroborated this information.

3. On March 31, 2010, the San Diego Office sent a letter of inquiry (LOI) to NCBC concerning the operational status of Station KFSD(AM)'s EAS equipment.³ In its response, NCBC acknowledged that Station KFSD(AM)'s EAS equipment, specifically the audio link, did not function properly from December 2009 until April 8, 2010.⁴ According to NCBC, the operator on duty contacted

¹ 47 C.F.R. § 11.35.

² Station KCEO(AM) and Station KFSD(AM) shared a common EAS unit and common monitoring receivers. The internal audio switching in the EAS unit was used for Station KCEO(AM), while a separate remote audio switch was used for Station KFSD(AM).

³ See Letter of Inquiry from William R. Zears, Jr., District Director, San Diego Office, Western Region, Enforcement Bureau, to North County Broadcasting Corporation (March 31, 2010) (on file in EB-11-SD-0028).

⁴ 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, (filed April 19, 2010, in EB-11-SD-0028) (LOI

Station KFSD(AM)'s 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, but when notified again in late February of additional EAS failures, he 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, and tested recently purchased pieces of equipment in an attempt to resolve the continuing EAS failures. NCBC also stated that after the San Diego Office's inspection on March 18, 2010, the engineer submitted the equipment for repair and learned that a power supply filter capacitor had "finally dried up" and had gone from causing intermittent failure to total failure of the audio link. NCBC also stated that the equipment was repaired as of April 8, 2010.

4. On January 11, 2011, the San Diego Office issued a Notice of Apparent Liability for Forfeiture (*NAL*) against NCBC for failure to ensure the operational readiness of Station KFSD(AM)'s EAS equipment.⁵ Although the base forfeiture for EAS equipment that is not properly installed or operational is \$8,000, the San Diego Office proposed a \$6,000 forfeiture in light of NCBC's repeated good-faith attempts to identify and repair the problems.⁶ In particular, the San Diego Office took into account the efforts of the Station KFSD(AM)'s engineer, prior to the San Diego Office's inspection, to repeatedly trouble-shoot and test the EAS unit, which he believed was experiencing intermittent failures, because co-located Station KCEO(AM) successfully used the same unit without any failures.

5. NCBC responded to the *NAL* on February 4, 2011.⁷ In its *Response*, NCBC argues that the *NAL* is unenforceable because the Commission has "never complied with its obligation under the Small Business Regulatory Enforcement and Fairness Act of 1996"⁸ NCBC also argues that the proposed forfeiture should be reduced because of NCBC's history of compliance with the Rules, and because NCBC took reasonable steps to resolve the EAS equipment failure when the problems with the EAS equipment were observed.⁹

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),¹⁰ Section 1.80 of the Rules,¹¹ and the Commission's *Forfeiture Policy Statement*.¹² In examining NCBC's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability

Response). *LOI Response* at 2.

⁵ *North County Broadcasting Corporation*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 201 (Enf. Bur. 2011) (*NAL*).

⁶ See Note to Section 1.80(b)(4) of the Rules, 47 C.F.R. § 1.80(b)(4) (listing "Good faith or voluntary disclosure" as a basis for adjusting forfeitures downward); *Radio One Licenses, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 15964, 15965 (2003), *recons. denied*, Memorandum Opinion and Order, 18 FCC Rcd 25481 (2003) (reducing \$5,200 forfeiture assessed for Emergency Alert System rule violations to \$4,000 due to the licensee's corrective measures prior to an investigation).

⁷ See Response of North County Broadcasting (filed Feb. 4, 2011, in EB-10-SD-0028) (*Response*).

⁸ *Response* at 1.

⁹ *Response* at 2.

¹⁰ 47 U.S.C. § 503(b).

¹¹ 47 C.F.R. § 1.80.

¹² *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), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

to pay, and other such matters as justice may require.¹³ We considered NCBC's response to the *NAL* in light of these statutory factors and find that reduction of the forfeiture is warranted for the reasons discussed below.

7. Every broadcast station is part of the nationwide EAS network.¹⁴ The EAS enables the President and state and local governments to provide immediate and emergency communications and information to the general public.¹⁵ 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.¹⁶ Required monthly and weekly tests originate from EAS Local or State Primary sources and must be retransmitted by the participating station.

8. 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. 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.¹⁷ 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.¹⁸ An EAS Participant may operate without the defective equipment pending its repair or replacement for 60 days without further FCC authority.¹⁹ If the repair or replacement of defective equipment is not completed within 60 days, an EAS Participant shall submit an informal request to the District Director of the local FCC field office for additional time to repair the defective equipment.²⁰

9. NCBC does not dispute the facts described in the *NAL*. According to the investigation, Station KFSD(AM)'s EAS equipment began to malfunction in December 2009. At that point, although NCBC did not have an obligation to report the problem to the Commission, it still had to fix the equipment. Station KFSD(AM)'s chief engineer concluded that the problem was intermittent because co-located Station KCEO(AM) was using the same equipment without incident. The problems continued, however, through late February and into early March 2010, exceeding the 60 day period allotted for repair or replacement of EAS equipment without requesting additional time from the local FCC field office. The Station KFSD(AM) chief engineer performed a complete inspection and attempted to identify the source of the problem but, despite these efforts, the audio link failures persisted. When the San Diego Office conducted its inspection on March 18, 2010, the FCC agents confirmed that Station KFSD(AM)'s EAS equipment was malfunctioning. At that point, Station KFSD(AM)'s chief engineer submitted the equipment for repair and learned that a power supply filter capacitor had gone from causing intermittent

¹³ 47 U.S.C. § 503(b)(2)(E).

¹⁴ 47 C.F.R. §§ 11.11, 11.41.

¹⁵ 47 C.F.R. §§ 11.1, 11.21.

¹⁶ 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.

¹⁷ 47 C.F.R. § 11.35.

¹⁸ 47 C.F.R. § 11.35(a)-(b).

¹⁹ See 47 C.F.R. § 11.35(b).

²⁰ See 47 C.F.R. § 11.35(c). No such request was submitted by NCBC to the San Diego Office.

failure to total failure of the audio link. Station KFSD(AM) resumed operating with fully functioning EAS equipment on April 8, 2010.²¹

10. NCBC contends that the *NAL* cannot be enforced because NCBC is a “small entity” and the Commission has never complied with its obligation under the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA)²² “to adopt a specific policy or program concerning the reduction or waiver of forfeiture for small entities.”²³ We find no merit in NCBC’s contention. The Commission has previously held that its policies, as detailed in the *Forfeiture Policy Statement*, comply with the SBREFA.²⁴ In particular, the Commission found that, consistent with the SBREFA, its precedent requires consideration of a small entity’s ability to pay along with any good faith efforts by the entity to comply with the law.²⁵

11. In the instant case, we have no evidence of NCBC’s inability to pay.²⁶ Additionally, the San Diego Office already reduced the proposed forfeiture amount after taking into account that “NCBC initiated good faith efforts, albeit unsuccessfully, to troubleshoot the EAS equipment failure prior to the Bureau’s inspection.”²⁷

12. NCBC also requests a reduction of the forfeiture because of its history of compliance with the Rules.²⁸ We have examined the record and agree. Accordingly, we reduce the total forfeiture from \$6,000 to \$4,800 based on NCBC’s history of compliance with the Rules.

13. We have examined NCBC’s *Response* to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that NCBC willfully and repeatedly violated Section 11.35 of the Rules. Considering the entire record and the factors listed above, we find that a forfeiture in the amount of \$4,800 is warranted.

IV. ORDERING CLAUSES

14. **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(f)(4) of the Commission’s Rules, North County Broadcasting Corporation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of four thousand, eight hundred dollars (\$4,800) for willfully and repeatedly violating Section 11.35 of the Commission’s Rules.²⁹

²¹ LOI Response at 2.

²² P.L. 104-121, March 29, 1996, as amended by P.L. May 25, 2007.

²³ *Response* at 2–3.

²⁴ *Forfeiture Policy Statement*, 12 FCC Rcd at 17109.

²⁵ *Id.*

²⁶ NCBC states in the *Response* that “NCBC’s tax returns which were sent directly to the Field Office on May 17, 2010, along with a letter asking that the forfeiture proposed in the *NAL* be canceled based on NCBC’s inability to pay [sic] establish that NCBC is a small entity.” *Response* at 2 n.1. We are unable to consider this claim because our records indicate that no such letter or tax returns were ever received by the San Diego Office, no such information was contained in the *LOI Response*, and the *NAL* was issued on January 11, 2011.

²⁷ *NAL*, 26 FCC Rcd at 203. For this reason, we also reject NCBC’s contention that the proposed forfeiture amount should be further reduced because the Station KFSD(AM) Chief Engineer made efforts to repair the equipment and that “the problem was a technical one that the Station’s Chief Engineer was unable to identify and therefore, unable to correct.” *Response* at 3–4.

²⁸ *Response* at 3.

²⁹ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 11.35.

15. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.³⁰ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.³¹ North County Broadcasting Corporation shall send electronic notification of payment to WR-Response@fcc.gov on the date said payment is made.

16. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.³² 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.

17. 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. 20554.³³ 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.

³⁰ 47 C.F.R. § 1.80.

³¹ 47 U.S.C. § 504(a).

³² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

³³ See 47 C.F.R. § 1.1914.

18. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by both First Class Mail and Certified Mail Return Receipt Requested to North County Broadcasting Corporation at 1563 South State College Boulevard, Anaheim, CA 92806, and to David Tillotson, its counsel of record, at 4606 Charleston Terrace, NW, Washington, D.C. 20007-1911.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau