

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

In the Matter of)	
)	
Media Mining Group, LLC)	File No.: EB-11-SD-0124
)	NAL/Acct. No.: 201232940001
Licensee of Station KRDD(AM))	FRN: 0010036804
Roswell, New Mexico)	Facility ID No.: 68131

FORFEITURE ORDER

Adopted: January 22, 2014

Released: January 22, 2014

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of six thousand, four hundred dollars (\$6,400) to Media Mining Group, LLC, (MMG), licensee of Station KRDD(AM), in Roswell, New Mexico, for willfully and repeatedly violating Section 11.35 of the Commission's rules (Rules).¹ The noted violation involved MMG's failure to ensure the operational readiness of the Station KRDD(AM) Emergency Alert System (EAS) equipment.

II. BACKGROUND

2. On December 7, 2011, the Enforcement Bureau's San Diego Office (San Diego Office) issued a Notice of Apparent Liability for Forfeiture and Order (*NAL*) for eight thousand dollars (\$8,000) to MMG for failing to ensure the operational readiness of the Station KRDD(AM) EAS equipment.² In response to the *NAL*, MMG does not deny the violations, but requests cancellation or reduction based on its history of compliance with the Rules, its ability to pay the forfeiture, the nature and circumstances surrounding the violation, and any other matters as justice requires.³

III. DISCUSSION

3. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),⁴ Section 1.80 of the Rules,⁵ and the Forfeiture Policy Statement.⁶ In examining MMG's response, Section 503(b)(2)(E) of the Act requires that

¹ 47 C.F.R. § 11.35.

² *Media Mining Group, LLC*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 16426 (Enf. Bur. 2011) (*NAL*). A comprehensive recitation of the facts and history of this case can be found in the *NAL* and is incorporated herein by reference.

³ See Response of Media Mining Group, LLC, to San Diego Office, Western Region, Enforcement Bureau (Jan. 5, 2012) (on file in EB-11-SD-0124) (*NAL Response*).

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ *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*).

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 to pay, and other such matters as justice may require.⁷

4. We affirm the *NAL*'s finding that MMG violated Section 11.35 of the Rules.⁸ 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.⁹ 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.¹⁰ As reflected in the *NAL*, on June 21, 2011, an agent from the San Diego Office conducted an inspection at Station KRDD(AM) and determined that although Station KRDD(AM) had EAS equipment installed, the equipment was not operational.¹¹ In particular, the EAS equipment was unable to receive the required tests and Station KRDD(AM) personnel were unable to produce documentation, logs, or records concerning EAS tests successfully or unsuccessfully received or sent.¹² Based on the undisputed evidence, we conclude that MMG willfully and repeatedly violated Section 11.35 of the Rules by failing to ensure the operational readiness of the Station KRDD(AM) EAS equipment.¹³

5. In response to the *NAL*, MMG nonetheless requests cancellation or reduction of the \$8,000 forfeiture, first arguing that the San Diego Office erred by not taking a "hard look" at the "nature, extent and circumstances" of the violation.¹⁴ We disagree. The "hard look" doctrine that is proposed by MMG is the standard the Commission is required to use when reviewing "meritorious applications for waiver . . . and [the Commission] must consider all relevant factors."¹⁵ While the "hard look" standard is not relevant to this inquiry, we find that the San Diego Office appropriately reviewed all the relevant factors when proposing the forfeiture to MMG.¹⁶ The Commission has already determined that the "adjustment criteria listed in . . . the guidelines reflect the factors outlined in the statute."¹⁷ For forfeitures proposed and assessed under Section 503(b) of the Act, as this one is, the adjustment factors included by

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ See *NAL*, *supra* note 2.

⁹ 47 C.F.R. § 11.35.

¹⁰ 47 C.F.R. § 11.35(a) – (b). An EAS Participant may operate without the defective equipment pending its repair or replacement for 60 days with out further FCC authority. See 47 C.F.R. § 11.35(b). 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. See 47 C.F.R. § 11.35(c). No such request was submitted by MMG to the San Diego Office. *NAL*, 26 FCC Rcd at 16430, n 13.

¹¹ *NAL*, 26 FCC Rcd at 16428, para 6.

¹² Station personnel acknowledged to the San Diego agent that the Station KRDD(AM) EAS equipment had not been operational since the station was vandalized in December of 2010. *Id.*

¹³ As required by the *NAL*, MMG submitted a written statement, signed under penalty of perjury, stating that Station KKRDD(AM) is now in compliance with Section 11.35 of the Rules. See Statement of Cholene Espinoza, Officer, Media Mining Group, LLC, to San Diego Office, Western Region, Enforcement Bureau (Jan 5, 2012) (on file in EB-11-SD-0124).

¹⁴ *NAL Response* at 2–3.

¹⁵ *KSCT-TV, Inc.*, 699 F.2d 1185, 1191 – 1192 (D.C. Cir. 1983) (finding that FCC acted arbitrarily in not giving "hard look" to application of local television network affiliate for waiver of network non-duplication rules).

¹⁶ See *One Mart Corporation*, Memorandum Opinion and Order, 23 FCC Rcd 9910 (Enf. Bur. 2008) ("hard look" doctrine is inapplicable to forfeiture proceedings, however, the criteria found in Section 503(b) of the Act must be applied).

¹⁷ *Forfeiture Policy Statement*, 12 FCC Rcd at 17100 (1997).

the Commission in its downward adjustment criteria, in Section 1.80, are: (1) minor violation; (2) good faith or voluntary disclosure; (3) history of compliance; and (4) inability to pay.¹⁸

6. We find that the San Diego Office properly considered the downward adjustment criteria and concluded that MMG's violation, which consisted of its failure to ensure the operational readiness of the Station KRDD(AM) EAS equipment from December 2010 through June 2011, was not a minor violation. MMG has produced no evidence that it was entitled to a reduction based on good faith or voluntary disclosure to the Commission. MMG has also produced no information concerning its ability to pay the forfeiture and we decline to reduce the forfeiture based solely on MMG's arguments that we must rely on information other than gross revenues and that other entities have received large reductions.¹⁹ MMG further argues that it has a history of compliance with the Rules and, after reviewing the Commission's records, we agree. We find that reduction of the forfeiture based on MMG's history of compliance with the Rules is warranted and reduce the forfeiture by \$1,600.

7. MMG also asserts that the San Diego Office failed to take into account other matters as justice may require, including the local nature of the broadcast service it provides, along with the value of the service it provides to the Hispanic community of Eastern New Mexico. While we applaud MMG's efforts, we find that they do not support a reduction in the forfeiture amount. The Commission has consistently held that "licensees are expected to comply with the Rules as well as to make continued efforts to serve the community to which they are licensed and will not be relieved of liability for violations of the Rules by the fact they have fulfilled their responsibility to serve their communities."²⁰ Additionally, "a licensee is not relieved of responsibility for complying with applicable statutes and rules by the fact that it has performed an outstanding public service to the community."²¹ Therefore, after consideration of the entire record and the factors listed above, we find that a forfeiture in the amount of \$6,400 is warranted.

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(f)(4) of the Commission's rules, Media Mining Group, LLC, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of six thousand, four hundred dollars (\$6,400) for violations of Section 11.35 of the Rules.²²

9. 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.²³ 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.²⁴ Media Mining Group, LLC, shall send electronic notification of payment to WR-Response@fcc.gov on the date said payment is made. The payment must be

¹⁸ 47 C.F.R. § 1.80(b)(5), Note: Guidelines for Assessing Forfeitures, Section II, Adjustment Criteria for Section 503 Forfeitures.

¹⁹ *NAL Response* at 3–4.

²⁰ *Radio Beaumont, Inc.*, Memorandum Opinion and Order, 50 FCC 2d 904 (1975) (\$2,000 forfeiture for failure to give proper notice to the parties called of licensee's intention to broadcast the conversations which were instigated by station-initiated telephone calls not reduced because of licensee's long record of public and community service).

²¹ *Esther Blodgett*, Memorandum Opinion and Order, 18 FCC 2d 6 (1969) (\$500 forfeiture for failure to respond to a notice of violation not reduced for public service to the community because a station is expected to provide a public service for its community).

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

²³ 47 C.F.R. § 1.80.

²⁴ 47 U.S.C. § 504(a).

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.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.

8. Any request for 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.

9. IT IS FURTHER ORDERED that a copy of this Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to Media Mining Group, LLC, 25 Central Park W., #17U, New York, NY 10023 and to its counsel, Ernest T. Sanchez, The Sanchez Law Firm P.C., 2300 M Street, NW, Suite 800, Washington, D.C. 20037.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

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.