

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

In the Matter of)	
)	
Bold Gold Media WBS, L.P. ¹)	File Nos.: EB-09-PA-0286; EB-
)	FIELDNER-12-00004582
Licensee of Station WWRR)	NAL/Acct. No.: 201132400004
)	FRN: 0014795496
)	Facility ID Number 36508

FORFEITURE ORDER

Adopted: June 10, 2014

Released: June 10, 2014

By the Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. We impose a penalty of \$6,000 against Bold Gold Media WBS, L.P. (Bold Gold), licensee of FM Station WWRR in Scranton, Pennsylvania, for failing to install required Emergency Alert System (EAS) equipment. The EAS rules require broadcasters to provide the communications capability to address the American public during a national emergency and may be used by federal, state, or local authorities to deliver important information such as AMBER alerts and weather information. We reject Bold Gold's contention that we failed to meet the applicable statutory limitations deadline in issuing the proposed forfeiture and affirm our finding that Bold Gold violated the Commission's rules requiring

¹ The Notice of Apparent Liability for Forfeiture in this case was mistakenly issued to Bold Gold Media Group, Inc. and not to Bold Gold Media WBS, L.P., the licensee of Station WWRR. *See Bold Media Group, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 967 (Enf. Bur. 2011) (*NAL*). However, at the time the *NAL* was issued, the license for Station WWRR listed Bold Gold Media Group, Inc. as the licensee. Indeed, the copy of the license observed by agents at the time of the inspection listed Bold Gold Media Group, Inc. as the licensee of Station WWRR. The error appears to have occurred as a result of the decision by Bold Gold's President, Vince Benedetto, to change the corporate entity through which he acquired Station WWRR. When the assignment application for Station WWRR was first submitted to the Commission, the parties sought approval to assign the license to Bold Gold Media Group, Inc., a corporation controlled by Mr. Benedetto. *See* BALH-20050707AAT (Original Assignment Application). The Commission granted the Original Assignment Application on December 9, 2005, but before the parties consummated the assignment, Bold Gold Media Group, Inc. sought Commission approval to assign Station WWRR to Bold Gold Media WBS, L.P., a limited partnership controlled by Mr. Benedetto. *See* BALH-20060125AEV (Modified Assignment Application). Because the Original Assignment Application, which reflected Bold Gold Media Group, Inc. as the assignee, was consummated after the Modified Assignment Application, the Commission's database and the license for Station WWRR identified Bold Gold Media Group, Inc. as the licensee. As Mr. Benedetto controls both Bold Gold Media Group, Inc. and Bold Gold Media WBS, L.P. and because Bold Gold Media WBS, L.P. had an opportunity to respond to the *NAL*, we re-caption this proceeding to reflect Bold Gold Media WBS, L.P. as the licensee of Station WWRR rather than re-issue the *NAL*. *See* 47 C.F.R. § 1.80(f)(2)–(3) (“The notice of apparent liability will be sent to the respondent, by certified mail, at his last known address . . . [and the] respondent will be afforded a reasonable period of time . . . to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture.”); *see also Catholic Radio Network of Loveland, Inc.*, Forfeiture Order, 29 FCC Rcd 121 (Enf. Bur. 2014) (correcting the name of a respondent in a Forfeiture Order, but not rescinding the underlying Notice of Apparent Liability for Forfeiture); *Marshall D. Martin*, Forfeiture Order, 19 FCC Rcd 20977 (Enf. Bur. 2004).

broadcasters to maintain operational EAS equipment. However, we reduce the forfeiture in consideration of Bold Gold's history of compliance and its good faith efforts to comply with the EAS rules prior to the inspection of Station WWRR.

2. In this Forfeiture Order (Order), we issue a monetary forfeiture against Bold Gold for willfully and repeatedly violating Section 11.35(a) of the Commission's Rules (Rules).² The noted violations involved Bold Gold's failure to install the required EAS equipment at Station WWRR.

II. BACKGROUND

3. On November 24, 2009, in response to a complaint that Station WWRR did not have EAS equipment, an agent from the Enforcement Bureau's Philadelphia Office (Philadelphia Office) conducted an inspection of Station WWRR's main studio in Scranton, Pennsylvania (Scranton Main Studio). During the inspection at the Scranton Main Studio, the agent found that Station WWRR did not have any EAS equipment installed. The station engineer acknowledged the failure to install EAS equipment for Station WWRR at the Scranton Main Studio.

4. The agent also observed that the two co-located and co-owned stations – WICK and WYCK – had operational EAS equipment at the Scranton Main Studio.³ The station engineer claimed that an EAS test for Station WWRR could possibly be transmitted by switching the audio source from its studio location in Plains, Pennsylvania (Plains Studio) to the Scranton Main Studio, and then conducting the test using the EAS equipment shared by Stations WICK and WYCK.⁴ At the agent's request, the engineer attempted to conduct a test in that manner and the test appeared to be successful. The station engineer admitted, however, that the station had never conducted any EAS tests for Station WWRR following such procedure. The station engineer also acknowledged that the Plains Studio did not have any EAS equipment installed at the time.⁵

5. On January 31, 2011, the Philadelphia Office issued a *NAL* to Bold Gold proposing a \$10,000 forfeiture, finding that it willfully and repeatedly violated Section 11.35 of the Rules by failing to install EAS equipment for Station WWRR at either the Scranton Main Studio or the Plains Studio from the time it purchased Station WWRR in 2006 until February 2010.⁶ Bold Gold filed a response to the *NAL* on March 1, 2011, claiming the *NAL* should be cancelled on the grounds that (1) the *NAL* was issued beyond the statute of limitations deadline; (2) the facts set forth in the *NAL* did not support a finding that Bold Gold failed to maintain operational EAS equipment for Station WWRR; and (3) the Philadelphia Office failed to take into account Bold Gold's history of compliance with the Rules and its remedial efforts prior to the

² 47 C.F.R. § 11.35(a).

³ Section 11.51(l) of the Rules states that "EAS Participants that are co-owned and co-located with a combined studio or control facility, (such as an AM and FM licensed to the same entity and at the same location or a cable headend serving more than one system) may provide the EAS transmitting requirements contained in this section for the combined stations or systems with one EAS Encoder." 47 C.F.R. § 11.51(l).

⁴ Bold Gold has the capability of originating programming from the Scranton Main Studio, but originates all of its programming from Plains Studio. Bold Gold uses a Studio Transmitter Link (STL) to transmit the broadcasts for Station WWRR from the Plains Studio back to the station's transmitter site in Scranton, Pennsylvania. Bold Gold also is configured with an STL to transmit the broadcasts from Station WWRR's main studio to the station's transmitter site in Scranton, Pennsylvania.

⁵ During the November 24, 2009, inspection at the Scranton Main Studio, the agent found a copy of the maintenance log for Station WWRR, dated September 1, 2008, and signed by the station engineer, which stated that "[a]t this time, when broadcasting from Plains, PA, WWRR (FM) does not meet the requirements of Part 11 of the FCC rules regarding EAS Encoding, EAS Decoding or EAS Retransmission."

⁶ *NAL*, 26 FCC Red at 969, paras. 6–7.

November 24, 2009 inspection in proposing the forfeiture.⁷

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),⁸ Section 1.80 of the Rules,⁹ and the Commission's *Forfeiture Policy Statement*.¹⁰ In examining Bold Gold's *NAL 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 to pay, and other such matters as justice may require.¹¹ As discussed below, we have considered Bold Gold's *NAL Response* in light of these statutory factors and find that a reduction in the forfeiture is warranted based on Bold Gold's history of compliance with the Rules and its remedial efforts prior to the November 24, 2009, inspection of Station WWRR.

7. As a threshold matter, we reject Bold Gold's argument that the Commission was required to issue the *NAL* within one year of the date of the violation.¹² In the case of broadcast station licensees, the statute of limitations in Section 503(b)(6) of the Act permits the Commission to issue a Notice of Apparent Liability for Forfeiture if (1) the violation charged did not occur more than one year prior to the date of issuance of the Notice of Apparent Liability for Forfeiture *or* (2) the violation charged did not occur "prior to the date of commencement of the current license term."¹³ Here, the violations charged occurred in November 2009, and the *NAL* was issued on January 31, 2011. Bold Gold's current license term began in August 2006 when it acquired Station WWRR and does not expire until August 1, 2014. While the *NAL* was not issued within one year of the violation, Section 503(b)(6)(A)(ii) permits the Commission to determine or impose a forfeiture in this case because the violations charged did not occur prior to August 2006.¹⁴ Accordingly, we find that the *NAL* was timely issued under Section 503(b)(6)(A)(ii) of the Act, and we deny Bold Gold's request that we cancel the *NAL* on this basis.

8. We affirm the *NAL*'s finding that Bold Gold violated Section 11.35 of the Rules by failing to install and maintain operational EAS equipment from the time it purchased Station WWRR in 2006 until February 2010. 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 so that the EAS monitoring and transmitting functions are available during the times a station is in operation.¹⁵ It is true, as Bold Gold points out in its *NAL Response*, that co-owned and co-located Stations WICK and WYCK had

⁷ *Bold Gold Media WBS, L.P.*, Response to Notice of Apparent Liability for Forfeiture (March 1, 2011) (on file in EB-09-PA-0286) (*NAL Response*).

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. § 1.80.

¹⁰ *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*).

¹¹ 47 U.S.C. § 503(b)(2)(E).

¹² *NAL Response* at 2-3.

¹³ 47 U.S.C. § 503(b)(6). *See, e.g., KGNT, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 5806, 5809, para. 8 (Enf. Bur. 2000), *aff'd*, Forfeiture Order, 16 FCC Rcd 4656 (Enf. Bur. 2001); *see also Emmis FM Broad. Corp. of Boston*, Memorandum Opinion and Order and Forfeiture Order, 11 FCC Rcd 8541, 8543, para. 5 (1996); *Lester T. Pritchard*, Letter, 6 FCC Rcd 2210, 2211, n.4 (1991).

¹⁴ *See* 47 U.S.C. § 503(b)(6)(A)(ii).

¹⁵ 47 C.F.R. § 11.35(a).

operational EAS equipment at the time of the inspection.¹⁶ It is also true, however, that Station WWRR was not connected to the EAS equipment for Stations WICK and WYCK and Bold Gold did not have EAS equipment dedicated to Station WWRR at the Plains Studio or the Scranton Main Studio on the day of the inspection. Although the station engineer conducted an EAS test during the inspection by switching Station WWRR's audio source from the Plains Studio to the Scranton Main Studio, the station engineer admitted to the agent that such procedure had not previously been used to conduct an EAS test.¹⁷ Accordingly, we find that Bold Gold willfully and repeatedly failed to install and maintain operational EAS equipment for Station WWRR in violation of Section 11.35 of the Rules.¹⁸

9. We nevertheless find that a reduction in the forfeiture is warranted. Bold Gold claims that the *NAL* did not take into account its history of compliance with the Rules or its efforts to secure EAS equipment for the Plains Studio prior to the agent's inspection.¹⁹ After reviewing the Commission's records, we agree that a reduction based on Bold Gold's history of compliance is warranted. We also agree that a reduction is warranted in light of evidence that Bold Gold contracted to acquire EAS equipment for the Plains Studio prior to the inspection.²⁰ Accordingly, we conclude that a reduction in the forfeiture amount from \$10,000 to \$6,000 is warranted.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Rules, Bold Gold Media WBS, L.P. **IS LIABLE FOR A**

¹⁶ *NAL Response* at 4-6.

¹⁷ As specifically noted in the *NAL*, using such a procedure would not bring Bold Gold into compliance with the EAS Rules. *NAL*, 26 FCC Rcd at 969, n. 12. Stations must have the capability to monitor their local primary sources for unscheduled emergency messages and to retransmit such messages on an emergency basis when necessary. If an actual and unscheduled EAS message was received, someone would need to be present at the Station WWRR studio (1) to hear that an EAS message was being received by Stations WICK and WYCK, (2) to switch the audio source from the Plains Studio to the Scranton Main Studio, (3) to interrupt normal programming, and (4) to conduct the test using the EAS equipment shared by Stations WICK and WYCK. Not only does such a procedure seem impractical, it could not be followed without undermining the ability of co-owned Stations WICK and WYCK to comply with their EAS requirements. In any event, we need not make that determination given that Bold Gold admitted it did not have dedicated EAS equipment for Station WWRR and had not previously transmitted a test by switching Station WWRR's audio from the Plains Studio to the Scranton Main Studio.

¹⁸ In concluding that the violation was willful, we believe that, notwithstanding Bold Gold's claim to the contrary, *see NAL Response* at n. 12, it was entirely appropriate to rely on the notation in Station WWRR's maintenance log dated September 1, 2008, and signed by the station engineer, which stated that "[a]t this time, when broadcasting from Plains, PA, WWRR (FM) does not meet the requirements of Part 11 of the FCC rules regarding EAS Encoding, EAS Decoding or EAS Retransmission." In any event, the Commission may assess a forfeiture for violations that are merely repeated, and not willful. *See, e.g., Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (proposing a forfeiture for, *inter alia*, a cable television operator's repeated signal leakage). We disagree with Bold Gold that our finding that the violation commenced in 2006 "is wholly unsupported by reference to any facts whatsoever." *NAL Response* at n. 13. The station engineer reported to the agent that Station WWRR did not have dedicated EAS equipment at the time of the inspection and he did not claim, nor is there any evidence, that Station WWRR ever had dedicated EAS equipment. Accordingly, we reasonably concluded that the violation commenced at the time Bold Gold acquired Station WWRR in 2006.

¹⁹ *NAL Response* at 7.

²⁰ *See Response* at 5. The evidence regarding Bold Gold's commitment to purchase EAS equipment for Station WWRR consists of a memorandum, dated August 7, 2009, from Station WWRR's General Manager that "Bold Gold Media has an agreement to purchase additional broadcast equipment from a local broadcast company, which includes an EAS system for use [with] WWRR. This equipment is expected to be available for installation for WWRR in approximately 90 days from the date of this memorandum."

MONETARY FORFEITURE in the amount of six thousand dollars (\$6,000) for violation of Section 11.35 of the Rules.²¹

11. 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 Order.²² 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.²³ Bold Gold Media WBS, L.P. shall send electronic notification of payment to NER-Response@fcc.gov on the date said payment is made.

12. 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.²⁴ 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.

13. 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. 20554.²⁵ 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.

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

²² 47 C.F.R. § 1.80.

²³ 47 U.S.C. § 504(a).

²⁴ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁵ See 47 C.F.R. § 1.1914.

14. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to Bold Gold Media WBS, L.P. at 1049 North Sekol Road, Scranton, Pennsylvania, 18504 and to Robert Lewis Thompson, Counsel for Bold Gold Media WBS, L.P., at Smithwick & Belendiuk, PC at 5028 Wisconsin Avenue, N.W., #310, Washington, DC 20016.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
Regional Director
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