
Federal Communications Commission

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

In the Matter of)	
)	
Bronco Broadcasting Co., Inc.)	
Station KIRL (AM))	File No. EB-00-KC-111
St. Charles, Missouri)	NAL/Acct.No. X3256-001

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: August 31, 2000

By the Enforcement Bureau, Kansas City Field Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find that Bronco Broadcasting, Co., Inc. ("Bronco"), licensee of station KIRL (AM), St. Charles, Missouri, has apparently violated sections 11.35(a), 73.61(a), 73.62(b)(3) and 73.3526(e)(12) of the Commission's Rules ("Rules") for failure to make appropriate entries in the broadcast station log indicating the reasons why tests of the Emergency Alert System (EAS) were not received, for failure to make field intensity measurements at each designated monitoring point location on the KIRL nighttime directional array as often as necessary to maintain compliance with the station authorization, for failure to lower power or terminate operation when the field intensity did exceed the maximum authorized field intensity at several monitoring points on the KIRL nighttime directional array, and for failure to compile a list of programs that have provided the station's most significant treatment of community issues each calendar quarter.¹ We conclude that Bronco is apparently liable for forfeiture in the amount of fifteen thousand dollars (\$15,000).

II. BACKGROUND

2. On May 8, 1998, Bronco Broadcasting Co., Inc. as licensee of radio station KIRL, St. Charles, Missouri, was issued a Forfeiture Order (NOF), NAL/Acct. No. 815KC0001, by the Commission's Compliance and Information Bureau, in the amount of \$7,000 for willful and repeated violations of 47 C.F.R. §73.62(b)(3). The NOF was issued for the repeated and ongoing out-of-tolerance condition of the KIRL nighttime directional operation.

3. On April 1, 1999, Bronco Broadcasting Co., Inc., as licensee of radio station KIRL, St. Charles, Missouri, was issued a Notice of Violation (NOV) by the Commission's Kansas City Office for violation of 47 C.F.R. §11.35, 73.61 and 73.3526(e)(12). The NOV was issued after a March 24, 1999 inspection by FCC Agent Brad Gilliland determined that the KIRL station logs documented missing EAS tests with no reasons explaining why the tests were missing. Measurements found the field intensity at 4 out of 5 designated monitoring points to exceed the maximum specified for the nighttime directional operation. In addition, the inspection found no issues-programs listing in the KIRL public inspection file.

¹ 47 C.F.R. §§11.35(a), 73.61(a), 73.62(b)(3) and 73.3526(e)(12)

4. On August 4, 2000, broadcast radio station KIRL was inspected by FCC Agents Brad Gilliland and Ronald Ramage of the Enforcement Bureau (EB) Kansas City Office. This inspection found violations pertaining to station logs, failure to take field intensity measurements, operation with excessive field intensity, and failure to maintain an issues-programs listing [47 C.F.R. §§11.35(a), 73.61(a), 73.62(b)(3) and 73.3526(e)(12)]. The station logs documented EAS tests from only one of two required sources with no explanation as to why the tests were missing. During the inspection the station's contract engineer stated that the KIRL nighttime power needed to be reduced to 55% of authorized power to maintain the field intensities within authorized limits. However, the station was maintaining 95% of authorized power and 4 out of 5 monitoring points were found with excessive field intensity. The issues-programs listing were not being compiled according the station office manager and no listing was found in the public inspection file. A Notice of Violation was issued to Bronco for these violations on August 10, 2000 requiring a response within 10 days. A signed receipt was returned by the U.S. Postal service indicating delivery of the NOV on August 12, 2000. No reply to the NOV was received from the licensee to that NOV as of the date of release of this Notice.

III. DISCUSSION

5. Section 11.35(a) states that "...broadcast stations must determine the cause of any failure to receive the required tests or activation's specified in §§ 11.61(a)(1) and (2). Appropriate entries must be made in the broadcast station log...indicating reasons why any tests were not received."² At the time of the inspection on August 4, 2000, the KIRL station logs for the period of July 16 – August 3 documented receipt of EAS tests from only the National Weather Service. The logs did not contain the reasons why the station had failed to receive required EAS tests from their second required source. The inspection on March 24, 1999 noted the same violation.

6. Section 73.61(a) states that "Each AM station using a directional antenna must make field strength measurements at the monitoring point locations specified in the instrument of authorization, as often as necessary to ensure that the field at those points does not exceed the values specified in the station authorization."³ During the inspection on August 4, 2000, the field intensity was measured to be in excess of the maximum authorized at 4 out of the 5 monitoring point locations specified on the KIRL station authorization. The station engineer, Jack Leverich, stated that power must be maintained at approximately 55% of authorized power to maintain field intensities within licensed maximums. The KIRL station logs for July 16 – August 3 show power being maintained at or near, 95% of authorized nighttime power. No indication of reduced power during this period was found. It was unknown when the station engineer had taken field intensity measurements prior to the inspection, but it was believed to be some time in early July 2000. The FCC inspection of the station on March 24, 1999 found excessive field intensity at 4 out of 5 nighttime monitoring points.

² 47 C.F.R. §11.35(a)

³ 47 C.F.R. §73.61(a)

7. Section 73.62(b)(3) states that “If any monitoring point exceeds its specified limit, the licensee must either terminate operation within 3 hours or reduce power in accordance with the applicable provisions of §73.1350(d), in order to eliminate any possibility of interference or excessive radiation in any direction.”⁴ During the inspection on August 4, 2000, the measured field intensity at 4 out of 5 designated nighttime monitoring points exceeded the maximum allowed under the station’s authorization. According to KIRL station engineer, Jack Leverich, the nighttime power must be lowered to 55% of authorized to maintain monitoring points within the licensed maximums. During the period of July 16 – August 3, 2000 the nighttime power was being maintained at, or near, 95% of authorized power. The NOF issued to Bronco on May 8, 1998 was for the same violation pertaining to the same ongoing out-of-tolerance condition of the KIRL nighttime directional operation. The FCC inspection on March 24, 1999 found excessive field intensity at 4 out of 5 monitoring points.

8. Section 73.3526(e)(12) states that “For commercial AM and FM broadcast stations, every three months a list of programs that have provided the station’s most significant treatment of community issues during the preceding three month period. The list for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October-December, April 10 for the quarter January-March, etc.). The list shall include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs shall include, but shall not be limited to, the time, date, duration, and title of each program in which the issue was treated.”⁵ The inspection on August 4, 2000 determined that the last issues-programs listing found in the station’s public inspection file was dated in calendar year 1993. The FCC named this as one of the violations’s specified in the NOV issued to Bronco on April 1, 1999.

9. Based on the evidence before us, we find that Bronco willfully⁶ and/or repeatedly violated Sections 11.35(a), 73.61(a), 73.62(b)(3) and 73.3526(e)(12) of the Rules. Pursuant to *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”), the base forfeiture amount for failure to maintain required records pertaining the reasons why EAS tests are not being received is \$1,000, the base forfeiture amount for failure to make required field intensity measurements as often as necessary to maintain compliance is \$2,000, the base forfeiture amount for failure to maintain directional pattern within prescribed parameters is \$7,000 and the base forfeiture amount for failure to file quarterly issues-programs listings in the public inspection file is \$3,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934 (“Act”), as amended, which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of

⁴ 47 C.F.R. §73.62(b)(3)

⁵ 47 C.F.R. §73.3526(e)(12)

⁶ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act. . . .” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷ Taking these factors into account, we note that Bronco has a history that demonstrates a lack of compliance, especially with regards to their nighttime directional operation. The KIRL nighttime operation has been cited on several previous occasions for out-of-tolerance operation and the problem appears to be ongoing. Because of this an increase in the forfeiture amount for failure to maintain directional pattern within prescribed parameters to \$14,000 is warranted. However, we also note that in response to the NOF, Bronco provided sufficient evidence that it was a small business. Since there is no indication that Bronco's status as a small business has changed, and after applying all of the *Forfeiture Policy Statement* and statutory factors to the instant case, a \$15,000 forfeiture is warranted.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act,⁸ and Sections 0.111, 0.311 and 1.80 of the Rules,⁹ Bronco Broadcasting Co., Inc., is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fifteen thousand dollars (\$15,000) for violating Sections 11.35(a), 73.61(a), 73.62(b)(3) and 73.3526(e)(12) of the Rules, 47 C.F.R. §§ 11.35(a), 73.61(a), 73.62(b)(3) and 73.3526(e)(12).

11. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Rules,¹⁰ within thirty days of the release date of this **NOTICE OF APPARENT LIABILITY**, Bronco Broadcasting Co., Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. X3256-001.

13. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – TPSD, NAL/Acct. No. X3256-001, and must include the NAL/Acct. No. X3256-001.

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; 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.

⁷ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01 (discussion of upward

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. §§ 0.111, 0.311, 1.80.

¹⁰ 47 C.F.R. § 1.80.

15. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.¹¹

16. **IT IS FURTHER ORDERED THAT** a copy of this **NOTICE OF APPARENT LIABILITY** shall be sent by Certified Mail, Return Receipt Requested, to Bronco Broadcasting Co., Inc., 3713 Hwy 94 N., St. Charles, Missouri 63301.

FEDERAL COMMUNICATIONS COMMISSION

Robert C. McKinney
District Director
Kansas City Office

¹¹ See 47 C.F.R. § 1.1914.