

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

In the Matter of )

Sycamore Valley Broadcasting, Inc. )  
Radio Station WQSV )  
P. O. Box 619 )  
Ashland City, TN 37015 )

File Number EB-02-AT-050  
NAL/Acct. No. 200232480001  
FRN 0003-7542-56

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: April 30, 2002**

By the Enforcement Bureau, Atlanta Office:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture, we find that Sycamore Valley Broadcasting, Inc. ("Sycamore") apparently violated Sections 11.52(d), 11.61(a), 17.50, 73.1400, and 73.1745(a) of the Commission's Rules.<sup>1</sup> WQSV failed to: monitor two Emergency Alert System ("EAS") sources, send and receive required EAS tests, re-paint its antenna structure to restore good visibility, maintain operating transmission system monitoring equipment, and reduce transmitter power between the times of local sunset and sunrise. We conclude that Sycamore Valley Broadcasting, Inc. is apparently liable for a forfeiture in the amount of twenty five thousand dollars (\$25,000).

**II. BACKGROUND**

2. On or about October 26, 1995, the Federal Communications Commission ("FCC") Enforcement Bureau's Atlanta Field Office ("Field Office") received information that radio station WQSV in Ashland City, Tennessee, failed to reduce transmitter power after sunset as required by the station authorization. On October 26, 1995, the Field Office sent to Sycamore, licensee of radio station WQSV, a letter concerning this alleged violation of Section 73.1745(a) of the Rules<sup>2</sup> for failure to reduce power at sunset. The letter did not require a response from the licensee and the Field Office received none.

3. On January 7, 1998, the Field Office received another complaint alleging WQSV's failure to reduce power at night. The Field Office sent Sycamore a letter via Certified mail on March 16, 1998, concerning the alleged overpower nighttime operation. The letter did not require a response from the licensee and the Field Office received none. The Certified Return Receipt was signed with the name of Sycamore's president and dated received on March 19, 1998.

4. On January 26, 1999, an agent of the Field Office monitored WQSV's signal continuously from before until after local sunset. Field strength measurements showed that WQSV did not reduce

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<sup>1</sup> 47 C.F.R. §§ 11.52(d), 11.61(a), 17.50, 73.1400, and 73.1745(a)

<sup>2</sup> 47 C.F.R. § 73.1745(a)

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power at sunset as required by the station authorization, but instead operated at greater than daytime power until station sign-off at approximately 10:00 pm CST.

5. On January 27, 1999, the Field Office agent conducted a detailed station inspection of WQSV. The agent observed fourteen violations of FCC Rules, including failure to provide transmission system monitoring and control, EAS violations, and visibility of the paint on the tower structure.

6. On February 5, 1999, the Field Office issued to Sycamore an Official Notice of Violation for the violations observed at WQSV on January 26 and 27, 1999.

7. On February 17, 1999, the Field Office received a written response from Sycamore, dated February 10, 1999, indicating that Sycamore either had corrected, or would correct upon receipt of paperwork and repair parts, all listed violations. The reply was signed with the name "Richard Albright" as President, Sycamore Valley Broadcasting, Inc.

8. On November 19, 2001, the Atlanta office received another complaint that WQSV failed to reduce power at night. The same day, the Field Office sent another letter to Sycamore via Certified mail concerning the alleged overpower nighttime operation and also noting that the Field Office had previously issued to Sycamore a Notice of Violation for this same offense in February, 1999. The letter did not require a response and the Field Office received none. The Certified Return Receipt showed a signature, "Richard Albright," and received date of November 23, 2001.

9. On February 4, 2002, the Field Office agent again monitored WQSV. Field strength measurements taken by the agent showed that WQSV did not reduce power at sunset as required. The agent made measurements from 4:00 pm CST until station sign-off at 7:00 pm CST, during which time WQSV's signal remained at greater than daytime power. Local sunset time for February is 5:30 pm CST.

10. On February 5, 2002, the Field Office agent again monitored WQSV. The agent made field strength measurements from station sign-on before sunrise at 6:00 am CST until 8:00 am CST, during which time WQSV operated at greater than daytime power. Local sunrise time for February is 6:30 am CST.

11. Still on February 5, 2002, the Field Office agent conducted a detailed station inspection of WQSV with station owner, Mr. Richard Albright. The station inspection revealed essentially the same violations observed during the 1999 station inspection, namely: failure to reduce power between local sunset and sunrise; failure to provide transmission system monitoring and control; inadequate tower painting; failure to monitor two EAS sources; and failure to send and receive required EAS tests.

### III. DISCUSSION

12. Section 11.52(d) of the Rules requires broadcast stations to monitor two EAS broadcast sources in accordance with the State EAS Plan.<sup>3</sup> WQSV only had the capability of monitoring one

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<sup>3</sup> 47 C.F.R. § 11.52(d)

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broadcast source. Section 11.61(a) of the Rules requires broadcast stations to send and receive weekly and monthly EAS tests.<sup>4</sup> The station's sole EAS receiver was turned off at the time of the station inspection. WQSV could neither send nor receive EAS tests and had no logs or records to indicate the station had ever sent or received the required EAS tests. Section 17.50 of the Rules requires owners with antenna structures requiring painting and lighting to clean and re-paint their antenna structures as often as necessary in order to maintain good visibility.<sup>5</sup> WQSV's antenna structure had over 60 percent of its orange and white paint flaked off, and the colored bands were indistinguishable when viewed at one-fourth of a mile from the tower. Section 73.1400 of the Rules holds the licensee responsible for operation within tolerances specified by the Rules and in accordance with the station authorization, and to provide sufficient transmission system monitoring and control capability so as to ensure compliance.<sup>6</sup> WQSV's transmitter remote control equipment had inoperative metering rendering the station operator incapable of determining operating power in either daytime or nighttime modes. Section 73.1745(a) of the Rules states that no broadcast station shall operate at times, or with modes or power, other than those specified and made part of the license.<sup>7</sup> WQSV operated in excess of daytime power on January 26, 1999, from local sunset until 10:00 pm CST. WQSV operated in excess of daytime power on February 4, 2002, from local sunset at 5:30 pm CST until station sign-off at 7:00 pm CST. WQSV operated in excess of daytime power on February 5, 2002, from station sign-on at 6:00 am CST until local sunrise at 6:30 am CST.

13. Based on the evidence before us, we find that on February 4 and 5, 2002, Sycamore Valley Broadcasting, Inc. repeatedly<sup>8</sup> and willfully<sup>9</sup> violated Sections 11.52(d), 11.61(a), 17.50, 73.1400 and 73.1745(a) of the Commission's Rules.<sup>10</sup>

14. Pursuant to Section 1.80(b)(4) of the Commission's Rules, the base forfeiture amounts for the violations cited in this notice are: \$10,000 for failure to repaint the tower (failure to comply with prescribed lighting and/or marking), \$8,000 for non-operational EAS equipment, \$4,000 for operating with excessive power at night (exceeding power limits), and \$3,000 for violation of transmitter control and metering requirements.<sup>11</sup> Section 503(b)(2)(D) of the Act requires us to 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."<sup>12</sup>

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<sup>4</sup> 47 C.F.R. § 11.61(a)

<sup>5</sup> 47 C.F.R. § 17.50

<sup>6</sup> 47 C.F.R. § 73.1400

<sup>7</sup> 47 C.F.R. § 73.1745(a)

<sup>8</sup> Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which applies equally to 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."

<sup>9</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies equally 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).

<sup>10</sup> 47 C.F.R. §§ 11.52(d), 11.61(a), 17.50, 73.1400 and 73.1745(a)

<sup>11</sup> 47 C.F.R. § 1.80(b)(4)

<sup>12</sup> 47 U.S.C. § 503 (b)(2)(D)

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The Field Office officially notified Sycamore of each of these violations as a result of the station inspection and monitoring in January, 1999. Sycamore responded to the Commission that it had corrected, or would correct, all of the violations. Sycamore repeated the same violations as evidenced by the monitoring and station inspection in February, 2002. Considering the entire record and applying the statutory factors listed above, this case warrants a \$25,000 forfeiture.

#### IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended,<sup>13</sup> and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,<sup>14</sup> Sycamore Valley Broadcasting, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of twenty five thousand dollars (\$25,000) for willful and repeated violation of Sections 11.52(d), 11.61(a), 17.50, 73.1400 and 73.1745(a) of the Commission's Rules.<sup>15</sup>

16. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules,<sup>16</sup> within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Sycamore Valley Broadcasting, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

17. Payment of the forfeiture may be made 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 MUST INCLUDE the NAL/Acct. No. and FRN referenced in the letterhead above.

18. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE NAL/Acct. No. and FRN referenced in the letterhead above.

19. 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 ("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.

20. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and

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<sup>13</sup> 47 U.S.C. § 503(b).

<sup>14</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

<sup>15</sup> 47 C.F.R. §§ 11.52(d), 11.61(a), 17.50, 73.1400 and 73.1745(a)

<sup>16</sup> 47 C.F.R. § 1.80.

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Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>17</sup>

21. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Sycamore Valley Broadcasting, Inc. at Radio Station WQSV, P. O. Box 619, Ashland City, TN 37015.

FEDERAL COMMUNICATIONS COMMISSION

Fred L. Broce  
District Director  
Atlanta Office, Enforcement Bureau

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<sup>17</sup> See 47 C.F.R. § 1.1914.