

Federal Communications Commission

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

In the Matter of)	
)	
Rego, Inc., c/o Betsy Trimble)	File No. EB-01-CG-139
Licensee: WGEZ)	
Beloit, Wisconsin)	NAL/Acct. No. 200132320002

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: July 13, 2001

By the District Director, Chicago Office, Enforcement Bureau:

I. Introduction

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Rego, Inc., c/o Betsy Trimble (“Rego”), licensee of Radio Station WGEZ, has apparently violated Sections 11.35(a), 73.1400(a)(1)(ii), and 73.1800(a) of the Commission’s Rules (the “Rules”).¹ These violations occurred as a result of the failure of Radio Station WGEZ, located in Beloit, Wisconsin, to have operational Emergency Alert System (“EAS”) equipment installed, failure to have sufficient transmission system monitoring and control capability and failure to have a station log. We conclude that Rego is apparently liable for a forfeiture in the amount of six thousand five hundred dollars (\$6,500).

II. Background

2. On January 12, 2001, the Chicago Office received an anonymous complaint alleging Radio Station WGEZ was operating in violation of various FCC Rules.

3. On March 21, 2001, agents from the Federal Communications Commission’s (“FCC”) Chicago Office inspected Radio Station WGEZ to verify compliance with the Rules. The inspection of the station revealed that WGEZ:

- (a) Did not have operational EAS equipment installed and was unable to monitor EAS transmissions. The station failed to transmit and log the required EAS tests, and failed to make the appropriate entries in the broadcast station log detailing the cause of the failure to receive the required EAS tests and activations.
- (b) Did not have a remote control system at the main studio able to provide sufficient transmission system monitoring and control capability to ensure compliance with Section

¹ 47 C.F.R. §§ 11.35(a), 73.1400(a)(1)(ii), and 73.1800(a).

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- 73.1350 of the Rules.²
- (c) Failed to maintain a station log.

Other violations noted during the inspection of WGEZ were that the station:

- (a) Did not have descriptions and diagrams documenting the measurement of the antenna resistance on file at the station.
- (b) Did not have the station authorization posted and readily available at the station.
- (c) Did not have the capability for the transmitter control personnel to turn off the transmitter at all times.
- (e) Failed to maintain the antenna input power at not less than 90% of the authorized power.
- (f) Failed to designate a person to serve as chief operator.

4. On March 27, 2001, a Notice of Violation (“NOV”) was issued to Rego for failure to have operational EAS equipment installed, failure to perform EAS tests, failure to file a letter of notification with the FCC in Washington, DC, that the direct method was being used to determine power, failure to have the station license and authorizations posted so they are readily available and easily accessible, failure to have sufficient transmission system monitoring and control capability, failure to maintain the input power at no less than 90%, failure to maintain a station log, and failure to have a designated chief operator. The NOV cited Rego for non-compliance with Sections 11.35(a), 11.61(a)(1)(v), 11.61(a)(2)(i)(A), 73.54(d), 73.1230(b), 73.1350(b)(2), 73.1400(a)(1)(ii), 73.1560(a)(1), 73.1800(a), and 73.1870(a) of the Rules.³

5. On May 1, 2001, the Chicago office received a response to the NOV from the Law Offices of Keller and Heckman, LLP, Rego’s legal representatives. In their reply, they acknowledged the various oversights and discrepancies associated with the station. However, they stated at the time of the inspection Rego was in the process of correcting the deficiencies that existed when they purchased the station. They requested the Commission to consider the good faith measures taken by Rego prior to and following the inspection. The reply also indicated Rego had corrected all of the violations cited in the NOV.

III. Discussion

6. Section 11.35(a) of the Rules requires broadcast stations to ensure that EAS Encoders, EAS Decoders and Attention Signals generating and receiving equipment is installed and functioning. Additionally, broadcast stations must determine the cause of any failure to receive the required EAS tests or activations specified in Sections 11.61(a)(1) and (2) of the Rules,⁴ and make the appropriate entries in the broadcast station log. Section 73.1400(a)(1)(ii) of the Rules requires the remote control system at the main studio must provide sufficient transmission system monitoring and control capability so as to ensure compliance with Section 73.1350 of the Rules. Section 73.1800(a) of the Rules requires licensees of each station to maintain a station log.

² 47 C.F.R. § 73.1350.

³ 47 C.F.R. §§ 11.61(a)(1)(v), 11.61(a)(2)(i)(A), 73.54(d), 73.1230(b), 73.1350(b)(2), 73.1560(a)(1), and 73.1870(a).

⁴ 47 C.F.R. §§ 11.61(a)(1) and (2).

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7. The Commission assesses monetary forfeitures pursuant to Section 503(b) of the Communications Act of 1934, *as amended*, (the “Act”)⁵ as implemented in Section 1.80 of the Rules.⁶ A forfeiture may be assessed against a person who the Commission finds to have willfully⁷ failed to comply with the provisions of the Act or the Rules. Forfeiture amounts are decided in accordance with Section 503(b)(2) of the Act⁸ and the Commission’s forfeiture guidelines in Section 1.80(b)(4) of the Rules.⁹

8. Based on the evidence before us, we find that Rego willfully violated Sections 17.35(a), 73.1400(a)(1)(ii), and 73.1800(a) of the Rules by failing to have a functioning EAS system, failing to have a remote control system installed and failure to maintain a station log. 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 EAS equipment not installed or operational is \$8,000, the base forfeiture amount for violation of transmitter control and metering requirements is \$3,000, and the base forfeiture amount for failure to maintain required records is \$1,000. The aggregated amount for these forfeitures is \$12,000. 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 culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹⁰ Recognizing that Rego had ordered new remote control and EAS equipment prior to the inspection, we deem a fifty percent reduction in the forfeiture amount for the violations associated with the equipment is appropriate. After applying the *Forfeiture Policy Statement* and the statutory factors to the instant case, we believe a \$6,500 forfeiture is warranted.

IV. Ordering Clauses

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80 of the Rules,¹¹ Rego, Inc., c/o Betsy Trimble is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of six thousand five hundred dollars (\$6,500) for failure to have operational EAS equipment installed, failure to have a remote control system that provided sufficient transmission system monitoring and control capabilities at the main studio, and failure to maintain a station log, in violation of Sections 11.35(a), 73.1400(a)(1)(ii) and 73.1800(a) of the Rules.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ Section 312(f)(1), which also applies to Section 503(b), provides: [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 provisions of the Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States. See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁸ 47 U.S.C. § 503(b)(2).

⁹ 47 C.F.R. § 1.80(b)(4).

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

¹¹ 47 C.F.R. §§ 0.111, 0.311, and 1.80.

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10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Rego, Inc., c/o Betsy Trimble SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. 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 should note the NAL/Acct. No. 200132320002.

12. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20402 and MUST INCLUDE THE NAL/Acct. No. 200132320002.

13. 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.

14. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹²

15. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to Rego, Inc., c/o Betsy Trimble, 6161 N. Berkley Blvd., Milwaukee, WI 53217. A copy of this NOTICE OF APPARENT LIABILITY shall be sent by First Class Mail to the Law Offices of Keller and Heckman, LLP, 1001 G Street, N.W., Suite 500 West, Washington, D.C. 20001.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
District Director
Chicago Office

¹² See 47 C.F.R. § 1.1914.