

Federal Communications Commission

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

In the Matter of)	
)	
)	
Delta Radio Greenville, LLC)	File Number EB-04-OR-103
Licensee of WROX(AM))	
in Clarksdale, Mississippi)	NAL/Acct. No.200432620005
Las Vegas, Nevada)	
		FRN 0007689243

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: July 21, 2004

By the District Director, New Orleans Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Delta Radio Greenville, LLC (“Delta”), licensee of radio station WROX(AM), Clarksdale, Mississippi, apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000) for willful and repeated violation of Sections 11.35(a) and 73.49 of the Commission's Rules (“Rules”).¹ Specifically, we find Delta apparently liable for failing to maintain operational Emergency Alert System (“EAS”) equipment and failing to enclose its antenna structure within an effective locked fence or other enclosure.

II. BACKGROUND

2. On May 12, 2004, an agent of the FCC Enforcement Bureau’s New Orleans Field Office (“New Orleans Office”) observed the antenna structure of WROX(AM) and discovered that one side of the fence enclosing the antenna structure was lying on the ground. The agent easily walked over the downed section of fence to the base of the antenna structure, which had radio frequency potential at its base.

3. On May 13, 2004, the agent inspected WROX(AM) and found that there was no EAS equipment present. In addition, there was no evidence that the equipment had been removed from service for repair.² The General Manager admitted that no EAS equipment had been present at WROX(AM) since his arrival at the station in October, 2003. When shown that one side of the fence enclosing WROX(AM)’s antenna structure was lying on the ground, he stated the fence had been this way for the same period of time.

¹47 C.F.R. §§ 11.35(a) and 73.49.

²See 47 C.F.R. § 11.35(b).

III. DISCUSSION

4. Section 11.35(a) of the Rules requires that broadcast stations maintain operational EAS encoders, decoders and attention signal generating and receiving equipment so that monitoring and transmitting functions are available during the times the stations are in operation.³ On May 13, 2004, WROX(AM) had no EAS equipment. There was no evidence or logs that WROX(AM) ever had installed EAS equipment or ever maintained operational EAS equipment, nor were there log entries indicating that the equipment was under repair. The General Manager admitted that WROX(AM) did not have EAS equipment since at least October 2003.

5. Section 73.49 of the Rules requires that antenna towers having radio frequency potential at the base must be enclosed within effective locked fences or other enclosures.⁴ On May 12 and 13, 2004, WROX(AM)'s antenna structure was not enclosed by an effective locked fence or enclosure.

6. Based on the evidence before us, we find Delta willfully⁵ and repeatedly⁶ violated Sections 11.35(a) and 73.49 of the Rules by failing to maintain operational EAS equipment and failing to maintain effective fencing around its antenna structure.

7. Pursuant to Section 1.80(b)(4) of the Rules,⁷ the base forfeiture amount for failure to maintain operational EAS equipment is \$8,000 and the base forfeiture amount for AM tower fencing violations is \$7,000. 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, as amended, which include 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.⁸ Considering the entire record and applying the factors listed above, this case warrants a \$15,000 forfeiture.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications

³47 C.F.R. § 11.35(a).

⁴47 C.F.R. § 73.49.

⁵Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under 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 4387-88 (1991).

⁶The 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.” 47 U.S.C. § 312(f)(2).

⁷47 C.F.R. § 1.80(b)(4).

⁸47 U.S.C. § 503(b)(2)(D).

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Act, as amended,⁹ and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,¹⁰ Delta Radio Greenville, LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fifteen thousand dollars (\$15,000) for willful and repeated violation of Sections 11.35(a) and 73.49 of the Rules by failing to maintain operational EAS equipment and failing to maintain effective fencing around its antenna structure.

9. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *NAL*, Delta Radio Greenville, LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. 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. and FRN referenced above. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹¹

11. The response, if any, must be mailed to the Federal Communications Commission, New Orleans Office, Room 460, 2424 Edenborn Avenue, Metairie, LA 70001, within thirty days of the release date of this *NAL* and **MUST INCLUDE THE *NAL*/Acct. No.** referenced above.

12. 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.

13. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this *NAL*, either in your response to the *NAL* or in a separate filing to be sent to the Regional Counsel, FCC, EB, South Central Region, 520 NE Colbern Road, Second Floor, Lee's Summit, MO 64086. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

14. **IT IS FURTHER ORDERED** that a copy of this *NAL* shall be sent by regular mail and

⁹47 U.S.C. § 503(b).

¹⁰47 C.F.R. §§ 0.111, 0.311, 1.80.

¹¹See 47 C.F.R. § 1.1914.

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Certified Mail Return Receipt Requested to Delta Radio Greenville, LLC, 9408 Grand Gate Street, Las Vegas, Nevada 89143.

FEDERAL COMMUNICATIONS COMMISSION

James C. Hawkins
District Director
New Orleans Office, South Central Region
Enforcement Bureau

Attachment