

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Class A TV Station KLHU-CA)	File No. EB-02-SD-033
TV 45 Productions, Inc.)	NAL/Acct. No. 200232940003
1600 W. Acoma Boulevard, Suite 36)	FRN #: 0004-0823-76
Lake Havasu City, AZ 86403)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 13, 2002

Released: March 13, 2002

By the Enforcement Bureau: San Diego Office

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find TV 45 Productions, Inc. (“TV 45”), the licensee of Class A TV station KLHU-CA Lake Havasu City, Arizona is apparently liable for a forfeiture, pursuant to Section 503(b) of the Communications Act of 1934,¹ as amended (“Act”), for apparently willfully and repeatedly violating Section 11.35(a) and Section 11.61 of the Commission’s Rules and Regulations (“Rules”)² by failing to ensure that required Emergency Alert System (“EAS”) equipment was installed and operational, and by failing to conduct required weekly and monthly EAS tests at station KLHU-CA. We conclude that TV 45 Productions, Inc., is apparently liable for forfeiture in the amount of eight thousand dollars (\$8,000).

II. BACKGROUND

2. On January 30, 2002, an agent from the Federal Communications Commission’s (“FCC”) San Diego office attempted to conduct an inspection of EAS equipment and records at the studio location of Class A TV station KLHU-CA. The studio was found to be located at 1600 W. Acoma Boulevard, Suite 36, Lake Havasu City, Arizona. During the inspection of station KLHU-CA the

¹ 47 U.S.C. § 503(b).

² 47 C.F.R. §§ 11.35(a) and 11.61

agent found that TV 45 did not have any EAS equipment installed. Because there was no EAS equipment installed, the station could not monitor EAS transmissions from designated sources, originate EAS transmissions or retransmit EAS transmissions. In addition, TV 45 did not maintain or make available for inspection any EAS records.

3. During the inspection Mr. James W. Husted, the owner and president of TV 45, advised the agent that station KLHU-CA had purchased the necessary EAS equipment but that it had not been installed. Mr. Husted told the agent that he had obtained an EAS unit for the station but it was stored in the corner of the associated warehouse. He also stated that this station had only recently become a Class A TV station, so he did not have the time to set up the EAS unit yet.

4. Upon return to the San Diego office, the agent examined the FCC database and found that the first authorization for Class A TV status for KLHU-CA (then authorized under the call sign K45AJ) had been issued on February 6, 2001, nearly one year before the inspection.

III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully³ or repeatedly⁴ fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. It is not pertinent whether or not the licensee's actions or omissions are intended to violate the law.

6. The Rules require broadcast stations, including Class A TV stations,⁵ to install and make operational EAS equipment (encoders, decoders, attention signal generators and receivers) so that monitoring and transmitting functions are available during the times whenever the station is in operation.⁶ The Rules also require broadcast stations to receive monthly EAS tests from designated local primary EAS sources, retransmit the monthly test within 15 minutes of its receipt and conduct tests of the EAS header and EOM codes at least once a week at random days and times.⁷ A broadcast station licensed for nearly one year has had adequate time to secure and install the necessary EAS equipment.⁸

³ 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).

⁴ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which applies to Section 503(b) of the Act, provides that "[t]he term 'repeated' ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ 47 C.F.R. § 11.11.

⁶ 47 C.F.R. § 11.35.

⁷ 47 C.F.R. § 11.61. The required monthly and weekly tests must conform with the procedures in the EAS Operational Handbook.

⁸ See e.g., *Radio One Licenses, Inc.*, Memorandum Opinion and Order, DA 02-219 (Enf. Bur. Jan. 31, 2002); *Rego Inc.*, Forfeiture Order, DA 01-2177 (Enf. Bur. Sept 19, 2001).

7. Based on the evidence before us, we find that on January 30, 2002, TV 45 Productions, Inc., willfully and repeatedly violated Sections 11.35(a) and 11.61 of the Rules, by failing to have EAS equipment properly installed at station KLHU-CA so that monitoring and transmitting functions were available and by failing to conduct the required monthly and weekly EAS tests. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*,⁹ the base forfeiture amount for EAS equipment not installed or operational is \$8,000. 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 Act, 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 In applying Section 1.80(b)(4) of the Rules and the statutory factors to the instant case, we find no compelling evidence to support any adjustments to the base forfeiture amounts. Therefore, a total forfeiture in the amount of \$8,000 is warranted.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,¹¹ TV 45 Productions, Inc., is hereby NOTIFIED of their APPARENT LIABILITY FOR A FORFEITURE in the amount of eight thousand dollars (\$8,000) for violating Sections 11.35(a) and 11.61 of the Commission's Rules and Regulations.¹²

9. 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, TV 45 Productions, Inc., 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/Account No. 200232940003 and FRN # 0004-0823-76.

11. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, DC 20554 and MUST INCLUDE THE NAL/Acct. No. 200232940003.

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; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current

⁹ *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).

¹⁰ 47 U.S.C. § 503(b)(2)(D).

¹¹ 47 C.F.R. §§ 0.111, 0.311, 1.80.

¹² 47 C.F.R. §§ 11.35(a) and 11.61.

financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. 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. 20554.¹³

14. IT IS FURTHER ORDERED THAT this NOTICE OF APPARENT LIABILITY shall be sent, by certified mail, return receipt requested, to TV 45 Productions, Inc., 1600 W. Acoma Boulevard, Suite 36, Lake Havasu City, AZ 86403.

FEDERAL COMMUNICATIONS COMMISSION

William R. Zears Jr.
District Director
San Diego Office

¹³ 47 C.F.R. § 1.1914.