

Federal Communications Commission

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

In the Matter of)	
)	
Rodgson, Inc.)	File No. EB-09-AT-0038
)	
Licensee of Radio Station)	NAL/Acct. No. 201032480002
WSDQ (AM))	
Dunlap, TN)	FRN 0007676935
Facility ID #67280)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: January 11, 2010

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

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Rodgson, Inc. (“Rodgson”), licensee of station WSDQ(AM), in Dunlap, Tennessee, apparently willfully and repeatedly violated Sections 11.35(a), 73.49, and 73.3526 of the Commission’s Rules (“Rules”)¹ by failing to maintain an operational emergency alert system (“EAS”), failing to enclose the base of an AM tower within an effective locked fence, and failing to maintain and make available a public inspection file. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),² that Rodgson is apparently liable for forfeiture in the amount of twenty-five thousand dollars (\$25,000).

II. BACKGROUND

2. On August 19, 2009, agents of the Commission’s Atlanta Office of the Enforcement Bureau (“Atlanta Office”), accompanied by the station’s general manager and other station staff, inspected the main studio of radio station WSDQ(AM). Neither the station staff nor the general manager knew how to send an EAS test,³ and there were no EAS logs to confirm recent EAS functionality.⁴ The agents found that the EAS receivers were not receiving audio from any monitoring assignment. The general manager and station staff admitted that the EAS had not worked for at least a year.

3. Still on August 19, 2009, the agents asked to inspect the station’s public inspection file and were told by the station staff and general manager that there was no file and that there had never been a file. Nobody at the station was familiar with the public inspection file requirements, and no one could produce any of the documents required to be in the public inspection file.

4. Still on August 19, 2009, the agents, accompanied by the general manager, inspected the station’s antenna tower fence. The general manager admitted that he had not visited the tower site in a long

¹ 47 C.F.R. § 11.35; 73.3526; and 73.49.

² 47 U.S.C. § 503(b).

³ At the time of the inspection, the EAS equipment was incapable of sending a test over the air.

⁴ The only evidence of a functional EAS was an old EAS log from 1997.

time. The agents observed that the lower planks of the wooden fencing were missing, thus providing access to the base. The agents also found that the gate for the fence was removed from its hinges and was propped up against the gate opening. There was no evidence of a locking mechanism, except for a metal - linked chain that was wrapped around one end of the wooden gate and hung from a nail on the support post. The rusted chain appeared to have been non-working for a long time. The tower was energized during operating hours and thus had radiofrequency potential at its base. The agents did not observe any perimeter property fence.

III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully or repeatedly 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. The term “willful” as used in Section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.⁵ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁶

6. The Rules provide that every broadcast station is part of the nationwide EAS network and is categorized as a participating national EAS source unless the station affirmatively requests authority to not participate.⁷ The EAS provides the President and state and local governments with the capability to provide immediate and emergency communications and information to the general public.⁸ State and local area plans identify local primary sources responsible for coordinating carriage of common emergency messages from sources such as the National Weather Service or local emergency management officials.⁹ Required monthly and weekly tests originate from EAS Local or State Primary sources and must be retransmitted by the participating station.

7. Section 11.35 of the Rules requires that broadcast stations maintain operational EAS encoders, decoders and attention signal generating equipment and receiving equipment so that monitoring and transmitting functions are available during times the stations are in operation. As the nation’s emergency warning system, the Emergency Alert System is critical to public safety, and we recognize the vital role that broadcasters play in ensuring its success. The Commission takes seriously any violations of the Rules implementing the EAS and expects full compliance from its regulatees. On August 19, 2009, agents from the Atlanta Office observed that the station’s EAS unit was not installed such that its transmitting functions were fully operational. There were no EAS logs to demonstrate that the station had been operational after 1997, and there was no other evidence to demonstrate any EAS activity after 1997.

⁵ Section 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 or any rule or regulation of the Commission authorized by this Act....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁶ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under 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.”

⁷ 47 C.F.R. §§ 11.11 and 11.41.

⁸ 47 C.F.R. §§ 11.1 and 11.21.

⁹ 47 C.F.R. § 11.18. State EAS plans contain guidelines that must be followed by broadcast and cable personnel, emergency officials and National Weather Service personnel to activate the EAS for state and local emergency alerts. The state plans include the EAS header codes and messages to be transmitted by the primary state, local and relay EAS sources.

No one at the station was familiar with EAS operations or how to send an EAS test. The general manager admitted that the EAS had not worked for at least a year.

8. Section 73.49 of the Rules states that “antenna towers having radio frequency potential at the base... must be enclosed within effective locked fences or other enclosures.” On August 19, 2009, Rodgson’s tower had radio frequency at its base. On August 19, 2009, agents from the Atlanta Office observed that the wooden fence surrounding the station’s antenna structure was missing its lower planks, which provided access to the tower base. In addition, the gate for the fence was removed from its hinges and propped up against the gate opening. The rusty chain, which perhaps previously served as a lock, did not appear to have been functional for quite some time. The agents did not observe a property fence around the perimeter of the property. The general manager admitted to not having visited the tower site in a long time. The fence was in such a condition of disrepair that it had to have been ineffective for more than one day.

9. Section 73.3526 of the Rules states that “[e]very permittee or licensee of an AM, FM, TV or a Class A station in the commercial broadcast services shall maintain a public inspection file containing material outlined in this section.” The public inspection file shall be maintained at the main studio of the station. The file shall be available for public inspection at any time during regular business hours. On August 19, 2009, agents from the Atlanta Office asked to inspect the station’s public inspection file at its main studio during normal business hours. The general manager stated that the station never had a public inspection file and that he did not know what was required to be in a public inspection file. The agents found no evidence of a public inspection file at the station, and the staff was unable to produce any of the required documents.

10. Based on the evidence before us, we find that Rodgson apparently willfully and repeatedly violated Sections 11.35, 73.49, and 73.3526 of the Rules by failing to maintain operational EAS, failing to maintain an effective locked fence around the base of its antenna tower, and failing to maintain a public inspection file. We also find that Rodgson apparently willfully violated Section 73.3526 of the Rules by failing to make available a public inspection file during normal business hours.

11. Pursuant to *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, (“*Forfeiture Policy Statement*”), and Section 1.80 of the Rules, the base forfeiture amount for failure to maintain an operational EAS system is \$8,000; failure to maintain a public inspection file is \$10,000; and failure to maintain an effective locked fence or enclosure at the base of the antenna structure is \$7,000.¹⁰ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.¹¹ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Rodgson is apparently liable for a twenty-five thousand dollar (\$25,000) forfeiture.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Rodgson, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for violations of Sections 11.35, 73.49, and 73.3526 of the

¹⁰ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

¹¹ 47 U.S.C. § 503(b)(2)(E).

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Rules.¹²

13. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Rodgson, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁸ If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. If payment is made, Rodgson, Inc. will send electronic notification on the date said payment is made to SCR.response@fcc.gov.

15. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Atlanta Office, 3575 Koger Blvd, Suite 320, Duluth, Georgia 30096 and must include the NAL/Acct. No. referenced in the caption.

16. 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.

17. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Rodgson, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Douglas G. Miller
District Director,
District Office
South Central Region
Enforcement Bureau

¹² 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 11.35(a), 73.49, 73.3526.

⁸ See 47 C.F.R. § 1.1914.