

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	File Nos.: EB-FIELDWR-13-00009787
Kenai Educational Media, Inc.)	EB-FIELDWR-16-00022001 ¹
)	
Licensee of Station KIBH-FM)	NAL/Acct. No.: 201732960001
Seward, Alaska)	FRN: 0021903372
)	Facility ID: 176521

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: July 17, 2017

Released: July 19, 2017

By the Commission:

I. INTRODUCTION

1. We propose a forfeiture penalty of \$66,000 against Kenai Educational Media, Inc. (KEMI), licensee of Station KIBH-FM, Seward, Alaska, for apparently violating multiple Commission rules. First, we find that KEMI apparently violated our Emergency Alert System (EAS) rules, which are critical to ensuring that the public can receive accurate and expedient alerts and warnings during times of national emergency.² Second, we find that KEMI apparently violated certain broadcast technical rules, which are designed to avoid harmful interference to other licensees,³ and certain broadcast operating rules.⁴ Finally, we find that KEMI apparently violated the Commission’s rule requiring that licensees respond to Notices of Violation and Commission requests for information.⁵

II. BACKGROUND

2. On June 18, 2013, an agent from the Enforcement Bureau’s Anchorage Resident Agent Office (Anchorage Office) inspected the main studio of KIBH-FM, a non-commercial educational station,

¹ The investigation began under File No. EB-FIELDWR-13-00009787, and was subsequently assigned File No. EB-FIELDWR-16-00022001. Any future correspondence with the Commission concerning this matter should reflect the new case number.

² See 47 CFR §§ 11.15 (EAS Operating Handbook Requirement); 11.35(a) (EAS equipment must be installed so that monitoring and transmitting functions are available while the station is in operation); 11.52(d)(1) (EAS participants must monitor two EAS sources).

³ See 47 CFR §§ 73.1125(a) (main studio requirements); 73.1400 (transmission system monitoring and control requirements); 73.1870(a) and (b)(3) (designation of a chief operator of the station). We note that the Commission has invited comment on eliminating the main studio requirements in Section 73.1125(a) of the Commission’s rules. *Elimination of Main Studio Rule*, Notice of Proposed Rulemaking, FCC 17-59 (May 18, 2017). Inviting comment on a rule change does not relieve a licensee from its obligation to comply with the rule while it is in effect. In this case, KEMI’s apparent failure to comply with this rule has persisted for years. See *infra* paras. 2-3.

⁴ See 47 CFR §§ 73.3527(a) (maintenance of a station local public inspection file); 73.1840(a) (retention of required station logs); 73.1230 (posting of station license).

⁵ See 47 CFR §§ 1.89(b) (duty to respond to a notice of violation); 73.1015 (requirement to respond to Commission request for information).

at 222 Fourth Avenue, Seward, Alaska. At the time of the inspection, this location was also the station's authorized transmitter location under a grant of special temporary authority (STA).⁶ The inspection revealed several apparent infractions of the Commission's rules, including but not limited to: violations of a number of EAS rules;⁷ failure to post the station license;⁸ failure to maintain a local public inspection file;⁹ and failure to maintain certain required logs.¹⁰ In addition, KEMI appeared to violate rules governing main studio staffing;¹¹ transmission system monitoring and control;¹² and designation of a chief operator of the station.¹³ On August 12, 2013, pursuant to Section 1.89 of the Commission's rules, the Anchorage Office issued a Notice of Violation (NOV) (August 2013 NOV) to KEMI for the apparent violations noted during the June 18, 2013, inspection.¹⁴ The August 2013 NOV required KIBH to "submit a written statement within twenty (20) days of release of this Notice," including an explanation of each violation, specific actions taken to correct each violation and a timeline for completion of each pending corrective action, accompanied by an affidavit or declaration under penalty of perjury signed by an authorized officer of KEMI with personal knowledge of the matters asserted.¹⁵ The Anchorage Office did not receive a response to the August 2013 NOV.

3. Subsequently, the Anchorage Office sent KEMI a Warning Letter in September 2013, and two additional NOV's in November 2013 and April 2016, directing KEMI to provide specific information concerning the apparent violations described in the August 2013 NOV.¹⁶ The NOV's also stated that failure to do so would constitute an apparent violation of Section 73.1015 of the Commission's rules.¹⁷ All such communications were sent to KEMI at its address of record at the Commission.¹⁸

⁶ See Special Temporary Authority No. BSTA-20130424AAG (MB, Audio Div., granted Apr. 25, 2013) (on file in CDBS).

⁷ 47 CFR §§ 11.15, 11.35(a), 11.52(d)(1).

⁸ 47 CFR § 73.1230.

⁹ 47 CFR § 73.3527(a).

¹⁰ 47 CFR § 73.1840(a). At the June 8, 2013, inspection, a KEMI representative could not produce any records for the station's operation (including equipment, transmitter, calibrations, and EAS) for the prior two years.

¹¹ 47 CFR § 73.1125(a); *Amendment of Sections 73.1125 & 73.1130 of the Commission's Rules, the Main Studio & Program Origination Rules for Radio & Television Broad. Stations*, Memorandum Opinion and Order, 3 FCC Rcd 5024, 5026, *erratum*, 3 FCC Rcd 5717 (1988) (holding that the rule requires stations to "maintain a meaningful management and staff presence").

¹² 47 CFR § 73.1400.

¹³ 47 CFR §§ 73.1870(a) and (b)(3).

¹⁴ NOV # V201332780025 at paras. 2, 4 (Aug. 12, 2013) (August 2013 NOV)(incorporated herein by this reference). The August 2013 NOV is also available in the Commission's Consolidated Data Base System (CDBS), in File No. BRED-20130930BXB. This is the file for KEMI's pending license renewal application, discussed briefly below. Other NOV's and a warning letter relevant to this proceeding and discussed further below are also available in this CDBS file, and are also on file with the Enforcement Bureau.

¹⁵ See August 2013 NOV at paras. 4-5.

¹⁶ Letter from David J. Carlton, Resident Agent, Anchorage Resident Agent Office, Western Region, Enforcement Bureau, to Annette Shacklett, President, Kenai Educational Media, Inc. (September 2013 Warning) (incorporated herein by this reference); NOV # V201432780006 (Nov. 7, 2013) (November 2013 NOV) (incorporated herein by this reference); NOV # V201632780001, 2016 WL 1645237 (Apr. 20, 2016) (April 2016 NOV) (incorporated herein by this reference).

¹⁷ 47 CFR § 73.1015.

¹⁸ The Anchorage Office sent the September 2013 Warning and the three NOV's by certified mail and first class mail to KEMI's address of record. Although KEMI did not accept delivery of or sign the receipt for the certified mail copy of the November 2013 NOV, we observe that the Post Office did not return the first class mail copy of this

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III. DISCUSSION

4. We find that KEMI apparently willfully violated the aforementioned provisions contained in Parts 11 and 73 of the Commission's rules, and willfully and repeatedly violated Sections 1.89(b) and 73.1015 of the Commission's rules.¹⁹ Section 503(b) of the Communications Act of 1934, as amended (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.²⁰ Section 312(f)(1) of the Act defines "willful" as the "conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.²¹ The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,²² and the Commission has so interpreted the term in the Section 503(b) context.²³ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.²⁴ The term "repeated" means the commission or omission of such act more than once or for more than one day.²⁵

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NOV, or the other NOV's or the September 2013 Warning, to the Anchorage Office. Accordingly, we presume that the Post Office delivered the first-class mail copy of the NOV's and the Warning to KEMI and that KEMI received the mailings. KEMI acknowledged receipt of the August 2013 NOV in its September 30, 2013, KIBH-FM license renewal application and attached copies of that NOV and Warning Letter to its license renewal application. (File No. BRED-20130930BXB, Section II, Question 4 Exh. 6, Attachment 6 (filed Sept. 30, 2013)). It also signed a receipt for the April 2016 NOV. This receipt is on file in EBATS File No. EB-FIELDWR-16-00022001. See 47 CFR § 1.5 (licensees are required to provide an address of record to the Commission, and ensure that correspondence delivered to that address will promptly reach the licensee or someone authorized by him to act on his behalf). The November 2013 NOV is also available on the Commission's website at https://apps.fcc.gov/edocs_public/attachmatch/DOC-324054A1.pdf (last visited May 23, 2017).

¹⁹ 47 CFR §§ 1.89(b), 11.15, 11.35(a), 11.52(d)(1), 73.1015, 73.1125(a), 73.1230; 73.1400, 73.1840(a), 73.1870(a), (b)(3), 73.3527(a).

²⁰ 47 U.S.C. § 503(b).

²¹ 47 U.S.C. § 312(f)(1).

²² H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) ("This provision [inserted in Section 312] defines the terms 'willful' and 'repeated' for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,] . . . 'willful' means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. 'Repeated' means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be 'continuous' would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission's application of those terms . . .").

²³ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California Broadcasting Co.*), *recons. denied*, 7 FCC Rcd 3454 (1992); see also *WDKA Acquisition Corporation, Licensee Of Station WDKA(TV), Paducah, Kentucky*, Forfeiture Order, 28 FCC Rcd 16398, 16400, para. 8 (MB 2013), *citing Sitka Broadcasting Co., Inc.*, Memorandum Opinion and Order, 70 FCC 2d 2375 (1978) (licensees have a responsibility to be aware of, and comply with, all applicable statutes, regulations, rules and Orders, and inadvertent errors, oversights, or failures to become familiar with Commission requirements are willful violations).

²⁴ 47 U.S.C. § 503(b) (any person found to have "willfully or repeatedly" failed to comply with the Act or Commission rules is liable for a forfeiture) (emphasis added); 47 CFR § 1.80(a) (same); see, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision*) (proposing a forfeiture for, *inter alia*, a cable television operator's repeated signal leakage); *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, para. 5.

²⁵ 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

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A. Violations of Emergency Alert System Rules

5. As stated above, the Field Agent's inspection of the KEMI facilities revealed a number of apparent violations of the Part 11 EAS rules. First, Section 11.15 of the Commission's rules requires that a copy of the EAS Operating Handbook "must be located at normal duty positions or EAS equipment locations when an operator is required to be on duty and be immediately available to staff responsible for authenticating messages and initiating actions."²⁶ Upon inspection, the Field Agent found that KEMI had no such Handbook.²⁷

6. Second, under Section 11.35(a) of the Commission's rules, "EAS Participants are responsible for ensuring that EAS Encoders, EAS Decoders, Attention Signal generating and receiving equipment, and Intermediate Devices used as part of the EAS to decode and/or encode messages in the EAS Protocol and/or the Common Alerting Protocol are installed so that the monitoring and transmitting functions are available during the times the stations and system are in operation."²⁸ During his inspection, the Agent found that KEMI appeared to have violated this rule by failing to have such EAS equipment installed such that the appropriate monitoring and transmitting functions were available. Specifically, the EAS device/system was set to broadcast emergency alert messages intended for another station, KWAP-AM in Wasilla, Alaska, in the Matanuska-Susitna Borough operational area, and not for the KIBH-FM station in the Kenai Peninsula Borough operational area.

7. Finally, under Section 11.52(d)(1) of the Commission's rules, EAS Participants must monitor two EAS sources.²⁹ During the inspection, our Agent found that KEMI appeared to be in violation of this requirement, because the KIBH-FM EAS system was monitoring only one source for EAS messaging, the National Oceanic and Atmospheric Administration's (NOAA's) Weather Radio (NWR) in Seward.³⁰

B. Violations of Broadcast Rules

8. The field inspection also revealed apparent violations of a number of the Commission's broadcast rules. First, KEMI failed to post a valid license in apparent violation of Section 73.1230 of the (Continued from previous page) _____ commission or omission is continuous, for more than one day." See *Callais Cablevision*, 16 FCC Rcd at 1362, para. 9.

²⁶ 47 CFR § 11.15. The EAS Operating Handbook is issued by the FCC and contains instructions for actions to be taken by personnel at the EAS Participant facilities in specific situations. *Id.*

²⁷ August 2013 NOV at para. 2.a.

²⁸ 47 CFR § 11.35(a).

²⁹ 47 CFR § 11.52(d)(1) ("EAS Participants must monitor two EAS sources"). Under the State of Alaska EAS Plan in effect at the time of the inspection, one of the two EAS sources that KEMI was required to monitor was KSRM-AM. State of Alaska Emergency Alert System Plan, Final Draft, at Appendix D, Table D-1 (Jan. 13, 1998). With respect to the other EAS source, KEMI had a choice of four stations: (1) the National Oceanic and Atmospheric Administration's (NOAA's) Weather Radio (NWR); (2) KFQD, (3) the Alaska Public Radio Network (APRN), or (4) KIMO.

1. NWR is also referred to as "National Weather Service (NWS)" Radio.
2. KFQD operates in Fairbanks, Alaska, on 750 AM and 103.7 FM.
3. APRN is a network of National Public Radio (NPR) affiliates in Alaska. Radio stations in this network include KSKA, 91.1 FM in Anchorage, Alaska, and KDLL, 91.9 FM in Kenai, Alaska.
4. KIMO was formerly the ABC affiliate in Anchorage, Alaska, operating on Channel 13. This station has since changed its call sign to KYUR.

In 2016, the Commission approved a revised State EAS Plan. State of Alaska Emergency Alert System Plan, Final Draft, at Appendix D, Table D-1 (2016).

³⁰ August 2013 NOV at para. 2.c. (noting that KEMI monitored only the "National Weather Service (NWS, Seward)"). "NWR" and "NWS" refer to the same service. *Id.*

Commission's rules.³¹ Second, KEMI apparently failed to maintain a station public inspection file as required by Section 73.3527 of the Commission's rules.³² KEMI also failed to retain the logs required by Section 73.1840 of the Commission's rules.³³ Additionally, instead of maintaining a main studio staff of at least one full-time manager and one full-time staff person as required by Section 73.1125(a) of the Commission's rules, only one volunteer was present at the main studio on the date of inspection.³⁴ Moreover, during the inspection, KEMI's representative could not produce a written document designating a chief operator for the station, as required by Section 73.1870 of the Commission's rules.³⁵ Finally, the agent observed that KEMI restricted access to the station transmission facilities to specific hours of the day, six days of the week, and that no automated system (ATS) or remote control facility had been installed. Thus, KEMI could not ensure that the station was operating at all times within tolerances specified by Commission's applicable technical rules and in accordance with the terms of the station authorization, as required by Section 73.1400 of the Commission's rules.³⁶

C. Failure to Respond to Commission Communications

9. In addition to the foregoing, KEMI apparently violated Commission rules requiring responses to Commission communications. Section 73.1015 of the Commission's rules states:

The Commission or its representatives may, in writing, require from any applicant, permittee, or licensee written statements of fact relevant to a determination whether an application should be granted or denied, or to a determination whether a license should be revoked, or to any other matter within the jurisdiction of the Commission....³⁷

Section 1.89 of the Commission's rules governs the issuance of notices of violations and states, in relevant part:

Within 10 days from receipt of notice or such other period as may be specified, the recipient shall send a written answer, in duplicate, directly to the Commission office originating the official notice. If an answer cannot be sent or an acknowledgment cannot be made within such 10-day period by reason of illness or other unavoidable circumstance, acknowledgment and answer shall be made at the earliest practicable date with a satisfactory explanation of the delay.³⁸

³¹ 47 CFR §§ 73.1230. The field inspection "found no documents of any instrument of authorization posted, or in a binder, and available for inspection for KIBH-FM operations." August 2013 NOV at para. 2.e.

³² 47 CFR §§ 73.3527(a)(2), (b). At the field inspection, "the KEMI representative was unable to produce a complete public inspection file . . ." August 2013 NOV at para. 2.i. As of the date of this Notice of Apparent Liability for Forfeiture, KEMI has not uploaded any files for KIBH-FM to the Commission's public inspection file website, <https://publicfiles.fcc.gov/fm-profile/kibh-fm>.

³³ 47 CFR § 73.1840(a); *see also id.* §§ 73.1800(a), 73.1820 (station log requirements). At the field inspection, the KEMI representative could not produce any records for the station's operation (including records pertaining to equipment, the transmitter, calibrations, or EAS) for the prior two years.

³⁴ 47 CFR § 73.1125(a); *Amendment of Sections 73.1125 & 73.1130 of the Commission's Rules, the Main Studio & Program Origination Rules for Radio & Television Broad. Stations*, Memorandum Opinion and Order, 3 FCC Rcd 5024, 5026, *erratum*, 3 FCC Rcd 5717 (1988) (holding that rule requires stations to "maintain a meaningful management and staff presence"); *Application for Review of Jones Eastern of the Outer Banks, Inc., Licensee, Radio Station WRSF(FM) Columbia, North Carolina*, Memorandum Opinion and Order, 6 FCC Rcd 3615, 3616, para. 9 (1991), *clarified*, 7 FCC Rcd 6800 (1992) (interpreting the main studio staffing requirement under 47 CFR § 73.1125(a) to require full-time managerial and full-time staff personnel). August 2013 NOV at para. 2.d.

³⁵ August 2013 NOV at para. 2.h; 47 CFR §§ 73.1870(a), (b)(3).

³⁶ 47 CFR § 73.1400.

³⁷ 47 CFR § 73.1015.

³⁸ 47 CFR § 1.89(b).

10. KEMI appears to have violated both of these rules, by failing to respond to three Commission Notices of Violation and a Warning Letter over the course of three years and by failing to provide the information called for therein. In its September 30, 2013, license renewal application, KEMI acknowledged receipt of the August 2013 NOV and the September 2013 Warning.³⁹ The November 2013 NOV was mailed to KEMI at its address of record by First Class U.S. Mail and by Certified Mail, and the First Class mailing was not returned as undeliverable. Finally, KEMI signed a receipt for the April 2016 NOV but did not respond. By failing to respond to the three NOVs by the deadlines stated therein, KEMI apparently violated Sections 1.89(b) and 73.1015 of the Commission's rules, and it apparently violated Section 73.1015 when it failed to respond to the August 2013 NOV by the deadline established in the Warning Letter.⁴⁰

D. Proposed Forfeiture Amount and Reporting Requirement

11. 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.⁴¹ Here, Section 503(b)(2)(A) of the Act authorizes us to assess a forfeiture against KEMI of up to \$48,114 for each violation or each day of a continuing violation, up to a statutory maximum of \$481,147 for a single act or failure to act.⁴² In exercising our forfeiture authority, we must consider 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

³⁹ Application No. BRED-20130930BXB, Section II, Question 4 and Exh. 6, Attachment 6; para. 3, *supra*.

⁴⁰ The September 2013 Warning directed KEMI to respond to the August 2013 NOV by September 23, 2013. September 2013 Warning at 1.

⁴¹ 47 U.S.C. § 503(b).

⁴² See 47 U.S.C. § 503(b)(2)(A); 47 CFR §§ 1.80(b)(1), (9). These amounts reflect inflation adjustments to the forfeitures specified in Section 503(b)(2)(A) (\$25,000 per violation or per day of a continuing violation and \$250,000 per any single act or failure to act). The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321 (DCIA), as further amended by the Federal Reports Elimination Act of 1998, Pub. L. No. 105-362, Sec. 1301, 112 Stat. 3280, and as further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Sec. 701, Pub. L. No. 114-74, 129 Stat. 599 (2015 Inflation Adjustment Act) (collectively, Federal Civil Penalties Inflation Adjustment Act, as amended), codified as amended at 28 U.S.C. § 2461 note), required the Commission to adjust its penalties for inflation and publish interim final rules with the initial penalty adjustment amounts by July 1, 2016, and new penalty levels must take effect no later than August 1, 2016. See 28 U.S.C. § 2461 note. The Commission published those interim final rules on June 30, 2016. See *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 31 FCC Rcd 6793 (EB 2016); see also *Adjustment of Civil Monetary Penalties to Reflect Inflation*, 81 Fed. Reg. 42554 (June 30, 2016) (setting August 1, 2016, as the effective date for the increases). The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, also requires agencies, starting in 2017, to adjust annually the civil monetary penalties covered thereunder, and to publish each such annual adjustment by January 15 of each year. 28 U.S.C. § 2461 note, citing the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended, § 4(a). See also Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments and Agencies re Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, M-17-11, Dec. 16, 2016 at 1, https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-11_0.pdf. The Bureau released the order making the 2017 annual adjustment on December 30, 2016. See *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 31 FCC Rcd 13485 (EB 2016); see also *Adjustment of Civil Monetary Penalties to Reflect Inflation*, 82 Fed. Reg. 8170 (Jan. 24, 2017) (setting January 24, 2017, as the effective date for the increases). The 2015 Inflation Adjustment Act provides that the new penalty levels shall apply to penalties assessed after the effective date of the increase, "including [penalties] whose associated violation predated such increase." See 28 U.S.C. § 2461 note, citing the Federal Civil Penalties Inflation Adjustment Act, as amended, § 6.

to pay, and such other matters as justice may require.”⁴³ In addition, the Commission has established forfeiture guidelines which set forth base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.⁴⁴ Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, that cause substantial harm or generate substantial economic gain for the violator, or where there are prior violations of any FCC requirements.⁴⁵

12. As noted above, KEMI apparently failed to have EAS equipment that was properly operating, in that the programming and identification of the EAS device/system was for another broadcast station, KWAP-AM in Wasilla, Alaska, in the Matanuska-Susitna Borough operational area, and not for station KIBH-FM in the Kenai Peninsula Borough operational area, in violation of Section 11.35(a) of the Commission’s rules.⁴⁶ In addition, KEMI apparently failed to conduct required monitoring of two sources with the EAS equipment it did have, in violation of Section 11.52(d) of the Commission’s rules.⁴⁷ Also, KEMI apparently failed to keep an EAS Operating Handbook at normal duty positions or EAS equipment locations when an operator is required to be on duty and make the EAS Operating Handbook immediately available to staff responsible for authenticating messages and initiating actions, in violation of Section 11.15 of the Commission’s rules.⁴⁸ The base forfeiture amounts for these apparent EAS violations total \$11,000.

13. We also observed above that KEMI appears to have violated a number of broadcast regulations. KEMI apparently failed to maintain a local public inspection file, in violation of Section 73.3527 of the Commission’s rules.⁴⁹ Furthermore, KEMI appears to have failed to maintain a meaningful staff presence at the main studio, in violation of Section 73.1125(a) of the Commission’s rules.⁵⁰ In addition, KEMI restricted access to the station transmission facilities to specific hours of the day, six days of the week, and had not installed an automated or remote control system. Thus, KEMI could not ensure compliance with the Commission’s technical rules at all times, in apparent violation of Section 73.1400 of the Commission’s rules.⁵¹ KEMI also failed to post a valid station license, to retain required station logs, or to produce a written document designating a chief operator of the station, in

⁴³ 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(8).

⁴⁴ 47 CFR § 1.80(b)(8), Note.

⁴⁵ *Id.*

⁴⁶ 47 CFR § 11.35(a). The base forfeiture amount for this apparent violation, EAS equipment not installed or operational, is \$8,000. 47 CFR § 1.80(b)(8), Note.

⁴⁷ The base forfeiture amount for this apparent violation, failing to conduct required monitoring, is \$2,000. 47 CFR § 1.80(b)(8), Note.

⁴⁸ 47 CFR § 11.15. The base forfeiture amount for this apparent violation, failure to maintain required records, is \$1,000. 47 CFR § 1.80(b)(8), Note.

⁴⁹ 47 CFR § 73.3527. The base forfeiture amount for this apparent violation, violation of public file rules, is \$10,000. 47 CFR § 1.80(b)(8), Note.

⁵⁰ 47 CFR § 73.1125(a); *Amendment of Sections 73.1125 & 73.1130 of the Commission’s Rules, the Main Studio & Program Origination Rules for Radio & Television Broad. Stations*, Memorandum Opinion and Order, 3 FCC Rcd 5024, 5026, *erratum*, 3 FCC Rcd 5717 (1988) (holding that rule requires stations to “maintain a meaningful management and staff presence”). The base forfeiture amount for violation of the main studio rule is \$7,000. 47 CFR § 1.80(b)(8), Note.

⁵¹ 47 CFR § 73.1400. The base forfeiture amount for violation of the transmitter control and metering requirements is \$3,000. 47 CFR § 1.80(b)(8), Note.

apparent violation of Sections 73.1230, 73.1840(a), and 73.1870(a) and (b)(3) of the Commission's rules.⁵² The base forfeiture amounts for these apparent broadcast regulation violations total \$23,000.

14. Finally, KEMI failed to respond to three NOV's and a warning letter, in apparent violation of Sections 1.89(b) and 73.1015 of the Commission's rules.⁵³ The base forfeiture amount for failure to respond to Commission communications is \$4,000.⁵⁴ Accordingly, the base forfeiture amount for KEMI's failure to respond to four separate Commission communications is \$16,000. Adding this to the amounts discussed above results in a total base forfeiture amount of \$50,000.

15. As mentioned above, we have discretion to depart from these guidelines, taking into account the particular facts of each individual case.⁵⁵ Given the totality of the circumstances, and consistent with the *Forfeiture Policy Statement*, we conclude that an upward adjustment is warranted. Section 1.80 of the Commission's rules lists repeated or continuous violations as an upward adjustment factor.⁵⁶ KEMI's failures to respond to the Commission documents discussed above appear to be both repeated and continuing violations. As noted above, for purposes of the Communications Act, "repeated" is defined as occurring more than once, and "continuing" as continuing for more than one day.⁵⁷ Accordingly, the violations for failure to respond to Commission documents are "repeated" because KEMI apparently failed to respond to Commission documents on four occasions.⁵⁸ In addition, these violations are "continuing" because, under Commission and Bureau precedent, failure to respond to a Commission document is a continuing violation until cured.⁵⁹ Based on all these factors, we find that a

⁵² 47 CFR §§ 73.1230, 73.1840(a), and 73.1870(a), (b)(3). For purposes of the base forfeiture amount, these are apparent failures to maintain required records. The base forfeiture amount for each of these three apparent violations is \$1,000, for a total of \$3,000. 47 CFR § 1.80(b)(8), Note.

⁵³ 47 CFR §§ 1.89(b), 73.1015.

⁵⁴ 47 CFR § 1.80(b)(8), Note.

⁵⁵ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17098-99, para. 22 (1997) (noting that "[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act") (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

⁵⁶ 47 CFR § 1.80(b)(8) Note.

⁵⁷ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which 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." See para. 4, *supra*; *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, para. 5; *Callais Cablevision*, 16 FCC Rcd at 1362, para. 9; *William F. Crowell, Licensee of Amateur Radio Station W6WBJ, Diamond Springs, California*, Forfeiture Order, 31 FCC Rcd 8700, 8703 n.29 (EB 2016).

⁵⁸ Para. 3, *supra*.

⁵⁹ *Onda Mexicana Radio Group, Inc., Licensee of AM Station WWFL, Clermont, FL*, Notice of Apparent Liability for Forfeiture and Order, 29 FCC Rcd 527, 530, para. 8 (EB 2014) (ongoing failure to respond to an NOV can be a continuing violation); see also *ADMA Telecom, Inc.*, Forfeiture Order, 26 FCC Rcd 4152, 4155, para. 8 (2011) (construing a carrier's failure to file a required document (a Form 499) with the Commission as a continuing violation until cured); *Google Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 4012, 4033, para. 50 (EB 2012) (Google's failures to provide information in response to LOI were continuing violations that lasted until cured); *LDC Telecomm., Inc.*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 300, 302, para. 8 (EB 2012) (characterizing LDC's failure to respond to the Bureau's LOI as "continuous"); *Net One Int'l*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 16493, 16496, para. 9 (EB 2011) (advising Net One that its failure "to respond fully to the LOI within ten days of the date of this NAL may constitute an additional, continuing violation"); *1st Source Info. Specialists, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 8193, 8196-97, para. 13 (2006) (characterizing a data broker's failure to respond fully to a Bureau subpoena and a

(continued...)

100 percent upward adjustment to the base forfeiture amount for the failures to respond to Commission communications, or \$16,000, is warranted. Accordingly, after applying the *Forfeiture Policy Statement*, Section 1.80 of the Commission's rules, and the statutory factors, we find that KEMI is apparently liable for a proposed forfeiture amount of \$66,000.

IV. CONCLUSION

16. We have determined that KEMI apparently willfully violated provisions contained in Parts 11 and 73 of the Commission's rules and willfully and repeatedly violated Sections 1.89(b) and 73.1015 of the Commission's rules. As such, KEMI is apparently liable for a forfeiture of \$66,000. We direct KEMI to submit a written statement, pursuant to Section 1.16 of the Commission's rules,⁶⁰ signed under penalty of perjury, that it has come into compliance with the EAS rules and broadcast rules discussed in this NAL above.⁶¹ KEMI must submit this statement within thirty (30) days of the release date of this NAL, to the address listed in paragraph 19 below. Continued failure to respond to Commission directives could lead to further sanctions, including additional forfeitures, revocation, or a cease and desist order.

V. ORDERING CLAUSES

17. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended,⁶² and Section 1.80 of the Commission's rules,⁶³ Kenai Educational Media, Inc., is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Sixty-Six Thousand Dollars (\$66,000) for violation of Sections 1.89(b), 11.15; 11.35(a); 11.52(d)(1); 73.1015; 73.1125(a); 73.1230; 73.1400; 73.1840(a); 73.1870(a) and (b)(3); and 73.3527(a) of the Commission's rules.⁶⁴

18. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Kenai Educational Media, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture, consistent with paragraph 22 below.

19. **IT IS FURTHER ORDERED** that Kenai Educational Media, Inc. **SHALL SUBMIT** a statement as described in paragraph 16 of this NAL within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order. The statement must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau, Office of the Field Director, Steven Spaeth, Senior Field Counsel, Room 4-A335. Kenai Educational Media, Inc. shall also e-mail the written statement to WR-Response@fcc.gov and Steven.Spaeth@fcc.gov.

20. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Kenai Educational Media, Inc., shall send electronic notification of payment to WR-Response@fcc.gov and Steven.Spaeth@fcc.gov on the date said payment is made. Regardless of the form of payment, a

(Continued from previous page) _____
citation the Bureau issued based on that failure as a continuing violation), *forfeiture issued*, Forfeiture Order, 22 FCC Rcd 431 (2007).

⁶⁰ 47 CFR § 1.16.

⁶¹ See notes 2-4, *supra*, and the Commission rules cited therein.

⁶² 47 U.S.C. § 503(b).

⁶³ 47 CFR § 1.80.

⁶⁴ 47 CFR §§ 1.89(b); 11.15; 11.35(a); 11.52(d)(1); 73.1015; 73.1125(a); 73.1230; 73.1400; 73.1840(a); 73.1870(a) and (b)(3); and 73.3527(a).

completed FCC Form 159 (Remittance Advice) must be submitted.⁶⁵ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

21. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.⁶⁶ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

22. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Commission’s rules.⁶⁷ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau, Office of the Field Director, Steven Spaeth, Senior Field Counsel, Room 4-A335, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to WR-Response@fcc.gov and Steven.Spaeth@fcc.gov.

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

⁶⁵ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

⁶⁶ See 47 CFR § 1.1914.

⁶⁷ 47 CFR §§ 1.16, 1.80(f)(3).

24. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and regular mail to Kenai Educational Media, Inc., 2001 Seward Highway, Suite B, Seward, AK, 99664.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary