

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

In the Matter of	)	
	)	
Atlantic Beach Radio, Inc.	)	File No. EB-02-AT-071
Licensee of Radio Station WMIR(AM)	)	NAL/Acct. No. 200232480007
Atlantic Beach, South Carolina	)	FRN: 0006-1248-87

**FORFEITURE ORDER**

**Adopted: July 8, 2003**

**Released: July 10, 2003**

By the Chief, Enforcement Bureau:

**I. Introduction**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of \$4,000 to Atlantic Beach Radio, Inc. (“Atlantic Beach Radio”), licensee of WMIR(AM), Atlantic Beach, South Carolina, for repeatedly violating Sections 11.35 and 73.1745 of the Commission’s Rules (“Rules”).<sup>1</sup> The noted violations involve Atlantic Beach Radio’s failure to maintain operational Emergency Alert System (“EAS”) equipment and overpower nighttime operation.

2. On June 24, 2002, the District Director of the Commission’s Atlanta, Georgia Field Office (“Atlanta Office”) issued a \$12,000 *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Atlantic Beach Radio alleging repeated and willful violations of Sections 11.35 and 73.1745 of the Rules.<sup>2</sup> On July 24, 2002, Atlantic Beach Radio filed a response to the *NAL*.<sup>3</sup>

**II. Background**

3. From May 6-8, 2002, a field agent from the Atlanta Office inspected WMIR(AM) in Atlantic Beach, South Carolina and observed the violations recounted in the *NAL*. On May 6 and 7, 2002, the agent conducted field strength measurements and observed that Atlantic Beach Radio failed to reduce WMIR(AM)’s power from its authorized daytime to nighttime level. On May 8, 2002, the agent inspected the station and found that although it possessed an EAS encoder/decoder unit, the EAS unit was not in operational mode and was not connected to any receivers. Furthermore, the agent found that WMIR(AM) did not have any EAS

<sup>1</sup> 47 C.F.R. §§ 11.35, 73.1745.

<sup>2</sup> *Atlantic Beach Radio, Inc.*, NAL/Acct. No. 200232480007 (Enf. Bur., Atlanta Office rel. June 24, 2002).

<sup>3</sup> Atlantic Beach Radio styles its response as a petition for reconsideration pursuant to Section 1.106 of the Rules, 47 C.F.R. § 1.106. Atlantic Beach Radio mistakenly believes that we issued it both a *NAL* and a *Forfeiture Order*. However, as we have not previously issued a *Forfeiture Order* in this proceeding, we will treat the pleading as a response to the *NAL* pursuant to Section 1.80(f)(3) of the Rules, 47 C.F.R. § 1.80(f)(3).

logs to demonstrate that its EAS unit had ever been installed and operational or that it had been taken out of service for repairs.

4. On May 8, 2002, the agent met with WMIR(AM)'s station manager, who told him that WMIR(AM) had been sharing an EAS unit with previously co-owned and co-located station WKVC(FM), North Myrtle Beach, South Carolina. The station manager did not have any logs to corroborate that statement. Regarding the nighttime power level issue, the station manager told the agent that WMIR(AM)'s transmitter was on an automatic timer that should have powered down the station. He said that he would contact the station engineer, who was out of town, notify him of the issue, and get instructions on how to reduce the station's power level.

5. On the evening of May 8, 2002, the agent conducted another round of field strength measurements and determined that Atlantic Beach Radio had reduced WMIR(AM)'s power at sunset, but still not to the Commission-authorized nighttime level.

6. During the week of May 15-21, 2002, the agent and WMIR(AM)'s station engineer held telephonic conversations regarding the agent's observations. According to the station engineer, WMIR(AM) had been sharing an EAS unit with WKVC(FM), which had been located in the same building as WMIR(AM). The station engineer stated that WMIR(AM) had purchased its EAS unit about one month prior to the agent's inspection when WKVC(FM)'s EAS unit was removed. During the conversations, the station engineer informed the agent that he had discovered that WMIR(AM)'s automatic timer used to reduce the station's power at sunset had been damaged, resulting in the station's failure to reduce its power to nighttime levels on May 6 and 7, 2002. The station engineer added that operator error caused the failure to reduce power to the authorized nighttime level on May 8, 2002. The Atlanta Office issued the subject *NAL* on June 24, 2002 to Atlantic Beach Radio for failing to maintain operational EAS equipment and operating with excessive power.

### III. Discussion

7. The District Director assessed the forfeiture amount in this case in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and *The Commission's Forfeiture Policy Statement and Amendments of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("*Forfeiture Policy Statement*").<sup>6</sup> In examining Atlantic Beach Radio's response to the *NAL*, Section 503(b) of the Act requires the Commission to take into account 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 such other matters as justice may require.<sup>7</sup>

8. Atlantic Beach Radio presents WMIR(AM)'s history of sharing an EAS unit with formerly co-located WKVC(FM) to suggest that its EAS violation, if any, was minor. According to Atlantic Beach Radio, WMIR(AM) and WKVC(FM)<sup>8</sup> were co-located, under common

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<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</sup> 12 FCC Rcd 17,087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>7</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>8</sup> Formerly WMIW-FM.

ownership, and their respective communities of license were only two miles apart. Atlantic Beach Radio's principal was also the principal of Covenant Educational Fellowship, Inc. ("CEF"), the entity which held the license for WKVC(FM). Atlantic Beach Radio asserts that approximately eighteen months prior to WMIR(AM)'s July 2002 response to the *NAL*, CEF assigned the license for WKVC(FM) to another entity.<sup>9</sup> According to statements, made under the penalty of perjury, from WMIR(AM) and WKVC(FM)'s station managers, which accompanied Atlantic Beach Radio's response, following the change in ownership, the two stations continued to share the studio site and certain equipment, including the EAS unit. The statements provide further that, at the end of April 2002, WKVC(FM) relocated its main studio, taking with it the shared EAS unit. WMIR(AM)'s station manager's statement provides that when WKVC(FM) moved out, Atlantic Beach Radio directed its station engineer to acquire a replacement EAS unit. Atlantic Beach Radio notes that the FCC agent viewed the new EAS unit at the time of his inspection and states that Atlantic Beach Radio installed that unit within the sixty-day period "allowed" by the Rules.<sup>10</sup> In sum, Atlantic Beach Radio argues that its shared EAS operation complied with the "spirit" of our Rules and that it should not be punished for this type of use. In the alternative, Atlantic Beach Radio suggests that if we do find that it violated the Rules, we should only find a minor violation here.

9. Under Section 11.51(j) of the Rules,<sup>11</sup> broadcast stations that are co-owned and co-located with a combined studio or control facility may provide the EAS transmitting requirements contained in Section 11.51 of the Rules<sup>12</sup> for the combined stations with one EAS encoder.<sup>13</sup> The moment that WMIR(AM) and WKVC(FM) were no longer co-owned, the stations were no longer permitted to share the EAS unit under Section 11.51(j) of the Rules, and, therefore, each station was obligated to have its own operational EAS encoder pursuant to Section 11.35 of the Rules. In this case, common ownership dissolved on June 16, 2000, yet WMIR(AM) and WKVC(FM) continued with their non-compliant EAS sharing arrangement until April of 2002—almost a full two years later.<sup>14</sup>

10. In their declarations, the station managers state that when WKVC(FM) moved out of the shared facility and took the EAS unit with it, which took place at the end of April 2002, shortly before the FCC agent's inspection, Atlantic Beach Radio directed its station engineer to

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<sup>9</sup> Our records reveal that on May 11, 2000, the Media Bureau granted the application for assignment of the license from CEF to Educational Media Foundation (BALED 20000328ABY). The assignment was consummated on June 16, 2000.

<sup>10</sup> Atlantic Beach Radio refers to the 60-day window provided in Section 11.35(b) of the Rules, whereby a station that has *defective* EAS equipment may operate without the defective equipment pending its repair or replacement without further FCC authority. *See* 47 C.F.R. § 11.35(b).

<sup>11</sup> 47 C.F.R. § 11.51(j).

<sup>12</sup> 47 C.F.R. § 11.51.

<sup>13</sup> In addition, the combined stations must meet the requirements contained in Section 11.32 of the Rules, 47 C.F.R. § 11.32.

<sup>14</sup> Our discussion of Atlantic Beach Radio's violation of Section 11.51 relates only to diminish its claim of good faith, and does not correspond to a separate monetary liability in this proceeding.

“acquire a replacement EAS unit to . . . [replace] the shared unit.”<sup>15</sup> At the time of the agent’s inspection, Atlantic Beach Radio had not yet installed that EAS equipment,<sup>16</sup> which WMIR(AM)’s station manager now declares “is installed and properly functioning.”<sup>17</sup> Accordingly, we conclude that the record is sufficient to support a finding that Atlantic Beach Radio repeatedly<sup>18</sup> violated Section 11.35 of the Rules.<sup>19</sup> We will credit, however, Atlantic Beach Radio for its good faith attempt at compliance by purchasing EAS equipment *before* our agent’s inspection.

11. We now turn to the overpower nighttime operation. Atlantic Beach Radio proffers that the agent observed the station during its first attempt at nighttime operation and that following that attempt the station engineer determined that the system was not properly functioning. Atlantic Beach Radio tells us that the station engineer is further investigating and testing the nighttime system and believes that WMIR(AM) can shortly resume full-time licensed operations. Conceding that it committed a technical violation, Atlantic Beach Radio asks us to consider its prompt remedial action and the information its station engineer provided to our agent as mitigating factors in this case.

12. We find that, on May 6, 7, and 8, 2002, Atlantic Beach Radio operated WMIR(AM) with excessive nighttime power in repeated violation of Section 73.1745 of the Rules.<sup>20</sup> We grant no credit for what merely amounts to Atlantic Beach Radio’s remedial action,<sup>21</sup> prompt though it may be, and its responses to our agent’s inquiries, which, as a Commission licensee, it is obligated to provide.

13. Atlantic Beach Radio further asserts that it has not received either a Commission Notice of Violation or complaints from the public and that we should consider this exemplary record, it continues, in mitigating the \$12,000 forfeiture amount. On another tack, Atlantic Beach Radio provides us with financial documentation in support of its request that we waive or reduce the forfeiture amount based on its inability to pay. Our examination of Commission records

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<sup>15</sup> *Declaration of Reggie Dyson*, WMIR(AM) Station Manager, Attachment A to Atlantic Beach Radio’s response; *see Declaration of Kurt Reeder*, WKVC(FM) Station Manager, Attachment B to Atlantic Beach Radio’s response.

<sup>16</sup> To the extent that Atlantic Beach Radio argues that its 60 days had not run, we reject its position because it makes no claim of *defective* EAS equipment, but, rather, simply loss of access to EAS equipment. *See supra* n.10.

<sup>17</sup> *Declaration of Reggie Dyson*, WMIR(AM) Station Manager, Attachment A to Atlantic Beach Radio’s response.

<sup>18</sup> Section 312(f)(2) of the Act defines the term “repeated,” when used with reference to the commission or omission of any act, as “the commission or omission of such act more than once, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

<sup>19</sup> In light of our determination that Atlantic Beach Radio repeatedly violated Section 11.35 of the Rules, it is unnecessary for us to determine whether that violation is also willful as alleged in the *NAL*. *See Koke, Inc.*, 23 FCC 2d 191 (1970).

<sup>20</sup> *See id.* (with respect to repeated violation of Section 73.1745 of the Rules).

<sup>21</sup> *See AT&T Wireless Servs., Inc.*, 17 FCC Rcd 21,866, 21,869 (2002); *Tri-County Broadcasting, Inc.*, DA 03-1551 (Enf. Bur., rel. May 13, 2003).

reveals that Atlantic Beach Radio does have a history of overall compliance with our Rules. Also, after reviewing Atlantic Beach Radio's financial documentation, we conclude that a reduction of the forfeiture amount is warranted. Consequently, after factoring in the appropriate downward adjustment criteria related to Atlantic Beach Radio's good faith effort, history of overall compliance, and inability to pay, we will reduce the \$12,000 forfeiture amount to \$4,000.

#### IV. Ordering Clauses

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act,<sup>22</sup> and Sections 0.111, 0.311, and 1.80(f)(4) of the Rules,<sup>23</sup> Atlantic Beach Radio Group, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$4,000 for repeatedly violating Sections 11.35 and 73.1745 of the Rules.

15. Payment of the forfeiture shall be made in the manner provided for in Section 1.80<sup>24</sup> of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>25</sup> Payment 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 must include the FCC Registration Number ("FRN") referenced above, and should also note the NAL/Acct. No. referenced above. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554.<sup>26</sup>

16. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class and certified mail, return receipt requested, to David M. Hunsaker, Esq., Putbrese, Hunsaker & Trent, P.C., 100 Carpenter Drive, Suite 100, P.O. Box 217, Sterling, Virginia 20167-0217 and Atlantic Beach Radio, Inc., P.O. Box 35884, Fayetteville, North Carolina 28303.

#### FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>22</sup> 47 U.S.C. § 503(b).

<sup>23</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>24</sup> 47 C.F.R. § 1.80.

<sup>25</sup> 47 U.S.C. § 504(a).

<sup>26</sup> 47 C.F.R. § 1.1914.