

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

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| In the Matter of |) | |
| |) | |
| Rotijefco, Inc. |) | File No. EB-02-LA-145 |
| |) | NAL/Acct. No. 200232900005 |
| Licensee of Station KZBN(AM) |) | FRN 0001-5306-33 |
| Santa Barbara, California |) | |

FORFEITURE ORDER

Adopted: July 16, 2003

Released: July 18, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of five thousand dollars (\$5,000) to Rotijefco, Inc. (“Rotijefco”), licensee of Station KZBN(AM), Santa Barbara, California, for willful violation of Section 11.35(a) and (b) of the Commission’s Rules (“Rules”).¹ The noted violation involves Rotijefco’s failure to maintain operational Emergency Alert System (“EAS”) equipment at Station KZBN, and its failure to log the status of the non-operational equipment.

2. On July 26, 2002, the Commission’s Los Angeles, California Field Office (“Los Angeles Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Rotijefco for a forfeiture in the amount of eight thousand dollars (\$8,000).² Rotijefco filed a response to the NAL on August 26, 2002.

II. BACKGROUND

3. On February 12, 2002, an FCC agent from the Los Angeles Office inspected Station KZBN. At the time of the inspection, there was no EAS equipment installed. The general manager of the station told the agent that the EAS equipment was non-operational and had been sent out for repair following the relocation of the station several months earlier. There were no entries in the station’s logs indicating that EAS equipment had been installed and operational or that it had been taken out of service for repair.

4. On July 26, 2002, the Los Angeles Office issued a NAL for an \$8,000 forfeiture to Rotijefco for failing to maintain operational EAS equipment at KZBN and for failing to log the status of the non-operational equipment in willful violation of Section 11.35(a) and (b). Rotijefco filed a response to the NAL on August 26, 2002. In its response, Rotijefco admits that it was not in compliance with Section 11.35(a) and (b) at the time of the inspection because its EAS equipment was off-site for repairs and its

¹ 47 C.F.R. § 11.35(a) and (b).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232900005 (Enf. Bur., Los Angeles Office, released July 26, 2002).

status had not been properly logged. However, Rotijefco asserts that the forfeiture should be cancelled or reduced because its error was ministerial in nature rather than one of avoidance or neglect. In addition, Rotijefco states that its record as a broadcaster has been unblemished prior to this violation. Finally, Rotijefco asserts that payment of the proposed \$8,000 forfeiture would impose a financial hardship on it and submits its tax returns for 1999, 2000 and 2001 in support of this assertion.

III. DISCUSSION

5. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, (“Act”),³ Section 1.80 of the Rules,⁴ and *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) (“*Policy Statement*”). In examining Rotijefco’s response, Section 503(b) of the Act requires that the Commission 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 other such matters as justice may require.⁵

6. Section 11.35(a) of the Rules requires broadcast stations to install and maintain operational EAS equipment so that monitoring and transmitting functions are available during the times when the station is in operation. Section 11.35(b) provides that if EAS equipment becomes defective, a broadcast station may operate without the defective equipment pending its repair or replacement for 60 days, but entries must be made in the station log showing the date and time the equipment was removed and restored to service. Section 11.35(c) provides that if repair or replacement of defective EAS equipment is not completed within 60 days, an informal request for additional time to repair or replace the equipment shall be submitted to the District Director of the nearest FCC Field Office. Rotijefco admits in its response to the *NAL* that it did not have EAS equipment installed at the time of the inspection and that there were no logs showing when the equipment had been removed from service. Further, Rotijefco does not dispute that the EAS equipment was out of operation for over 60 days without Commission approval. Accordingly, we conclude that Rotijefco willfully⁶ violated Section 11.35(a) and (b) of the Rules.

7. Rotijefco argues that the forfeiture should be cancelled or substantially reduced because the violation was ministerial in nature. We disagree that the forfeiture should be canceled. The rules are clear that broadcast stations must maintain operational EAS equipment, and if the equipment becomes defective, Commission approval is required if the defective equipment will not be restored to service within 60 days. Rotijefco’s EAS equipment was out of operation for over 60 days. Rotijefco offers no explanation why it did not either have the equipment repaired during that period or seek authorization for additional time to repair the equipment. The failure to log removal of defective EAS equipment was part

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ 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,’ ... 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).

of the broader violation of not having operational EAS equipment for more than 60 days without Commission approval. Thus, we do not believe that cancellation on this basis is warranted. We reiterate that we expect full compliance in this important public safety area. We believe however, that the proposed forfeiture should be lowered somewhat based on the fact that, as Rotijefco points out, it had purchased EAS equipment in the first instance and was in the process of having the equipment repaired. The fact that Rotijefco had identified the equipment failure and sent the equipment out for repair prior to the inspection justifies a reduction from \$8,000 to \$6,500.

8. Rotijefco also asserts that its record as a broadcaster has been unblemished prior to this violation. We agree that reduction of the forfeiture amount is warranted based on Rotijefco's past history of compliance with the Commission's rules. We accordingly reduce the forfeiture to \$5,000.

9. Finally, Rotijefco asserts that payment of the proposed \$8,000 forfeiture would impose a financial hardship on it and submits its tax returns for 1999, 2000 and 2001 in support of this assertion. The Commission has repeatedly held that a company's gross revenues are the best indicator of its ability to pay a forfeiture.⁷ After considering the financial information submitted by Rotijefco, we conclude that its gross revenues are sufficient to enable it to pay a \$5,000 forfeiture.

10. We have examined Rotijefco's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Rotijefco willfully violated Section 11.35(a) and (b) of the Rules, but we reduce the forfeiture amount from \$8,000 to \$5,000.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503 of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,⁸ Rotijefco, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five thousand dollars (\$5,000) for willful violation of Section 11.35(a) and (b) of the Rules.

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 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.⁹ Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232900005 and FRN 0001-5306-33. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

⁷ See *Long Distance Direct, Inc.*, 15 FCC Rcd 3297, 3305 (2000); *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1991). The Commission has also stated that if gross revenues are sufficiently great, the existence of operating losses does not by itself mean that a company cannot afford to pay a forfeiture. *Id.*

⁸ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

⁹ 47 U.S.C. § 504(a).

¹⁰ See 47 C.F.R. § 1.1914.

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail return receipt requested to Rotijefco, Inc., 1875 Century Parkway East, # 2250, Los Angeles, California 90067, and to its counsel, Lee W. Shubert, Esq., KMZ Rosenman, 1025 Thomas Jefferson Street, N.W., East Lobby, Suite 700, Washington, D.C. 20007-5201.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau