

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

In the matter of	)	
	)	
Radio Lake Placid, Inc.	)	
WIRD(AM)	)	File Numbers: EB-02-BF-178 and
WLPW(FM)	)	EB-02-BF-179
Lake Placid, New York	)	
	)	NAL/Acct. No. 20033228000
	)	FRN: 0003 7652 52
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: December 23, 2003**

**Released: December 30, 2003**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order* (“*Order*”), we cancel the proposed monetary forfeiture in the amount of eight thousand dollars (\$8,000), issued to Radio Lake Placid, Inc. (“Lake Placid”) for its apparent willful and repeated violation of Section 11.35(a) of the Commission’s Rules (“Rules”).<sup>1</sup> The alleged violation involved Lake Placid’s failure to install an operational Emergency Alert System (“EAS”).

2. On October 3, 2002, the Resident Agent of the Commission’s Buffalo, New York Field Office (“Buffalo Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”)<sup>2</sup> to Lake Placid for \$8,000. On November 1, 2002, Lake Placid filed a response to the *NAL*.

**II. BACKGROUND**

3. On July 2, 2002, an agent from the Buffalo Office inspected co-located Radio Stations WIRD(AM) and WLPW(FM) in Lake Placid, New York. Neither WIRD or WLPW had EAS equipment installed at the main studio. On July 10, 2002, the Buffalo Office issued two *Notices of Violation* to Lake Placid for the Section 11.35 violations found during the WIRD and WLPW inspections.

4. On October 3, 2002, the Buffalo Office issued an *NAL* to Lake Placid for its failure to have installed an operational EAS system. On November 1, 2002, Lake Placid filed a response to the *NAL* and denied it violated Section 11.35(a) of the Commission’s Rules. Lake Placid supplied declarations by Timothy F. Nardiello, Secretary and General Manager, Radio Lake Placid, Inc. and David Goth, a radio consulting engineer, which establish that its EAS equipment had been removed for repair on

<sup>1</sup> 47 C.F.R. § 11.35(a).

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL Acct. No. 20033228000 (Enf. Bur., Buffalo Office, rel. October 3, 2002).

or about May 29, 2002 and was repaired by Mr. Goth on July 12, 2002, within 45 days of its removal. Lake Placid requests the *NAL* be cancelled under Section 11.35(b) because its EAS equipment was repaired or replaced within the 60 day period authorization in that provision.

### III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934 as amended (“Act”),<sup>3</sup> Section 1.80 of the Rules,<sup>4</sup> and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.<sup>5</sup> In examining Lake Placid’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 any other such matters as justice may require.<sup>6</sup>

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 times when the stations and systems are 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.<sup>7</sup> After reviewing the record in this case, including the declarations submitted by Lake Placid, we conclude that the evidence shows that the time frame that it operated without the defective equipment, May 29, 2002 – July 12, 2002, did not exceed the number of days that it is permitted to do so by the rule. We therefore conclude that the monetary forfeiture should be cancelled.

### IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to Section 504(b) of the Act,<sup>8</sup> and Section 1.80(f)(4) of the Rules,<sup>9</sup> the *NAL*, issued to Radio Lake Placid, Inc. **IS CANCELLED**.

8. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail, return receipt requested, to Timothy Nardiello, Secretary, General Manager, Radio Lake Placid, 17 Wilmington Road, Lake Placid, New York, 12946 and its counsel, Richard F. Swift, Esq., at Irwin, Campbell & Tannenwald, P.C., 1730 Rhode Island Avenue, N.W., Suite 200, Washington, D.C. 20036-3101.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> 47 C.F.R. § 1.80.

<sup>5</sup> 12 FCC Rcd. 17087 (1997), recon. denied, 15 FCC Rcd. 303 (1999).

<sup>6</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>7</sup> 47 C.F.R. § 11.35(b).

<sup>8</sup> 47 U.S.C. § 504(b).

<sup>9</sup> 47 C.F.R. § 1.80(f)(4).

