

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

In the Matter of)	
)	
Fayette County Broadcasting)	File Number EB-02-AT-315
Former Licensee of Station WSTN(AM))	NAL/Acct. No. 200332480003
Somerville, Tennessee)	FRN: 0005-0323-70
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: May 17, 2004

Released: May 19, 2004

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 Fayette County Broadcasting Company, Inc. (“Fayette County Broadcasting”), former licensee of Station WSTN(AM), Somerville, Tennessee, for failure to install operational Emergency Alert System (“EAS”) equipment at its station in apparent willful and repeated violation of Section 11.35(a) of the Commission’s Rules (“Rules”).¹ While we cancel the forfeiture for a demonstrated inability to pay, we admonish Fayette County Broadcasting for its willful and repeated violation of Section 11.35(a) of the Rules.

II. BACKGROUND

2. On August 6, 2002, an agent from the Commission’s Atlanta Office (“Atlanta Office”) inspected Station WSTN(AM). The agent found that EAS equipment was installed but not connected to audio and power sources. Station personnel could not produce EAS logs to indicate that the required weekly or monthly EAS test activations had been sent or received, or that EAS equipment had been removed from service. During a telephone interview on September 10, 2002, the station owner said that the equipment had been disconnected around May 2002. On October 2, 2002, the owner faxed the Atlanta Office stating that the equipment, which had been removed for service, had been returned to the station in July 2002, but was not reconnected until two days after the Commission inspection. The owner also stated that all station personnel had been retrained to log every EAS test.

3. On November 5, 2002, the Atlanta Office released a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Fayette County Broadcasting for a forfeiture in the amount of eight thousand dollars (\$8,000) for its failure to have operational EAS equipment installed at the station in violation of Section 11.35(a).² In its November 18, 2002 response, Fayette County Broadcasting does not challenge

¹ 47 C.F.R. § 11.35(a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332480003 (Enf. Bur., Atlanta Office, released November 5, 2002).

the findings of the *NAL*, and admits the EAS system had been inoperative and logs incomplete at the time of inspection. Fayette County Broadcasting states that the EAS equipment is now operational and that the employees have been trained to ensure that the EAS tests are properly logged. Additionally, Fayette County Broadcasting seeks reduction or cancellation of the forfeiture based upon its prompt remedial action and its claimed inability to pay.

III. DISCUSSION

4. The proposed 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*.⁵ In examining Fayette County Broadcasting’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 such other matters as justice may require.⁶

5. Section 11.35(a) of the Rules provides that broadcast stations are responsible for ensuring that EAS equipment used as part of the EAS is installed so that the monitoring and transmitting functions are available during times the station and system are in operation. From approximately May 2002 until August 8, 2002, Fayette County Broadcasting did not have properly operating EAS equipment installed at the station. Fayette County Broadcasting acknowledges that the EAS equipment was not operational in its response. We find that Fayette County Broadcasting’s violation of Section 11.35(a) of the Rules was willful⁷ and repeated.⁸

6. In support of its request for cancellation or reduction, Fayette County Broadcasting cites its “immediate response to correct the infraction.” Fayette County Broadcasting’s remedial action subsequent to notification of the violation does not warrant cancellation or reduction of the proposed

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ 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).

⁸ As provided by 47 U.S.C. § 312(f)(2), a continuous violation is “repeated” if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. *See* H.R. Rep. 97th Cong. 2d Sess. 51 (1982). *See Southern California Broadcasting Company*, *id.* at 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn 56 (2003).

forfeiture.⁹ It is well established that “corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations.”¹⁰

7. Fayette County Broadcasting also submits federal income tax returns for years 1999, 2000, and 2001 to demonstrate its inability to pay the monetary forfeiture. The Commission has determined that, in general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.¹¹ After reviewing the financial documentation submitted, we conclude that payment of the proposed \$8,000 forfeiture would impose financial hardship on Fayette County Broadcasting. Furthermore, we note that Fayette County Broadcasting assigned the license for WSTN(AM) and is no longer a Commission licensee.¹² Therefore, we conclude that cancellation of the forfeiture is warranted.¹³ Nevertheless, we find that it is appropriate to admonish Fayette County Broadcasting for its willful and repeated violation of Section 11.35(a).¹⁴

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act,¹⁵ and sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,¹⁶ the forfeiture in the amount of eight thousand dollars (\$8,000) proposed in the November 5, 2002 *NAL* issued to Fayette County Broadcasting, **IS CANCELLED**.

9. **IT IS FURTHER ORDERED THAT** Fayette County Broadcasting **IS ADMONISHED** for failure to install operational EAS equipment at Station WSTN(AM) in willful and repeated violation of Section 11.35(a) of the Rules.

⁹ See *KGVB, Inc.*, 42 FCC 2d 258, 259 (1973).

¹⁰ See *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994).

¹¹ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Afton Communications Corp.*, 7 FCC Rcd 6741 (Com. Car. Bur. 1992) (forfeiture not deemed excessive where it represented approximately 3.9 percent of the violator's gross revenues).

¹² The Commission staff granted the application to assign the license for WSTN(AM) on September 5, 2002 (File No. BAL-20020711AP), and the assignment was consummated on December 4, 2002.

¹³ See *Lighthouse Broadcasting*, 18 FCC Rcd 9573, 9576 (Enf. Bur. 2003).

¹⁴ *Id.* at 9576.

¹⁵ 47 U.S.C. § 503(b).

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

10. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail, Return Receipt Requested, and by First Class Mail to Fayette County Broadcasting, 798 N. Sebastian, West Helena, Arkansas 73290.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau