

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

In the Matter of)	
)	
Renaissance Radio, Inc.)	File No. EB-02-DL-672
Licensee of AM Broadcast Station KCAF)	
in Farmersville, Texas)	NAL/Acct. No. 200332500005
and Owner of Antenna Structure # 1222577)	
in Cado Mills, Texas)	FRN 0003-7277-73
Dallas Texas)	

MEMORANDUM OPINION AND ORDER

Adopted: June 14, 2004

Released: June 16, 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 twenty-five thousand dollars (\$25,000) issued to Renaissance Radio, Inc. (“Renaissance Radio”), the licensee of Station KCAF(AM), Farmersville, Texas and owner of antenna structure #1222577 in Caddo Mills, Texas. We find that Renaissance Radio failed to maintain operational Emergency Alert System (“EAS”) equipment, failed to exhibit all red obstruction lighting on the antenna structure from sunset to sunrise, and failed to maintain an effective locked fence around the base of its AM antenna tower in apparent willful and repeated violation of Sections 11.35(a), 17.51(a), and 73.49 of the Commission’s Rules (“Rules”).¹ While we cancel the forfeiture for a demonstrated inability to pay, we admonish Renaissance Radio for its willful and repeated violation of Sections 11.35(a), 17.51(a), and 73.49 of the Rules.

II. BACKGROUND

2. On November 13, 2002, an agent of the Commission’s Dallas, Texas Office (“Dallas Office”) conducted an on-site inspection of Station KCAF(AM). The inspection revealed that the electrical system of the station’s centermost antenna structure (#1222577) would not support operation of the required obstruction lighting when the station was transmitting. An employee of Station KCAF(AM) stated that the antenna structure had not been lighted since the station first began transmitting from that location around the end of June 2002. In addition, the agent observed that Renaissance Radio had not installed any fencing around the base of KCAF’s centermost antenna structure, even though the tower had RF potential at its base. On November 21, 2001, the agent returned to the KCAF tower site and found the tower partially enclosed with temporary plastic construction webbing. A portion of the webbing, however, sagged almost to the ground, allowing unrestricted access to the base of the tower. On November 22, 2002, Renaissance Radio informed the Dallas Office that it had stopped broadcasting to install equipment to allow operation of the lights on KCAF’s centermost tower.

¹47 C.F.R. §§ 11.35(a), 17.51(a), and 73.49.

3. On January 28, 2003, in response to a complaint of overpower operation, the agent again inspected Station KCAF(AM). The inspection revealed that the station could not monitor EAS functions during station operation because it did not have any EAS receiving equipment installed. Moreover, the station did not have any records of receiving any EAS tests or activations or of removing EAS equipment for repair and could not explain why it was missing such records. An employee of Renaissance Radio stated that EAS receivers had been installed at one time but they had not worked since at least August 2002.

4. On April 21, 2003, the Dallas Office issued a *Notice of Apparent Liability for Forfeiture* to Renaissance Radio in the amount of twenty-five thousand dollars (\$25,000) for the apparent willful and repeated violation of Sections 11.35(a), 17.51(a), and 73.49 of the Rules.² On May 22, 2003, Renaissance Radio filed a response to the *NAL* seeking a cancellation or reduction of the proposed forfeiture. Renaissance Radio asserts that it promptly corrected all of the violations after the agent brought such matters to its attention but before the *NAL* was issued. Moreover, it asserts that in October 2002, the EAS equipment for Station KCAF(AM) was being monitored and tested from its Dallas studio. Finally, Renaissance Radio states that it is unable to pay the proposed forfeiture, as it is a debtor in possession.

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”),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) (“*Forfeiture Policy Statement*”). In examining Renaissance Radio’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. Renaissance Radio does not dispute that its centermost antenna structure remained unlit from about June 27 (the date the station began transmitting at that location) through November 21, 2002 or that the antenna structure was not enclosed by an effective locked fence until sometime after November 21, 2002 in apparent violation of Sections 17.51(a)⁶ and 73.49⁷ of the Rules. We find that Renaissance

²*Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332500005 (Enf. Bur., Dallas Office, April 21, 2003) (“*NAL*”).

³47 U.S.C. § 503(b).

⁴47 C.F.R. § 1.80.

⁵47 U.S.C. § 503(b)(2)(D).

⁶Section 17.51(a) of the Rules requires that all red obstruction lighting on antenna structures exceeding 200 feet be exhibited from sunset to sunrise. 47 C.F.R. § 17.51(a). The Antenna Structure Registration for Renaissance Radio’s antenna structure requires that red obstruction lighting be exhibited at night.

⁷Section 73.49 of the Rules requires AM antenna towers having radio frequency potential at the base (series fed, folded unipole, and insulated base antennas) to be enclosed within an effective locked fence or other enclosure. 47 C.F.R. § 73.49.

Radio's violations of Section 17.51(a) and 73.49 of the Rules were willful⁸ and repeated.⁹

7. Section 11.35(a) states that: Broadcast stations ... are responsible for ensuring that EAS Encoders, EAS Decoders and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the stations and systems are in operation.¹⁰ Renaissance Radio admits that the EAS receivers at the KCAF(AM) studio were not functioning for a period of time prior to February 2003. It asserts, however, that during October 2002 KCAF(AM)'s EAS systems were being "monitored and tested" from its Dallas studio. Renaissance Radio, however, did not produce EAS logs or records for the Dallas studio or the KCAF(AM) studio. Nevertheless, assuming its assertions are true, Renaissance Radio still cannot demonstrate that EAS equipment was installed and operational from August 2002, the timeframe its employee states the EAS receivers became inoperable, to September 2002 and from November 2002 until February 2003. We find that Renaissance Radio's violation of Section 11.35(a) of the Rules was willful¹¹ and repeated.¹²

8. Renaissance Radio asserts that the proposed forfeiture should be cancelled because it was a "first-time station owner" that "moved as promptly as possible to cure any violations" as soon as the agent brought the violations to its attention.¹³ Although Renaissance Radio became the licensee of Station KCAF(AM) on September 30, 2002, a month before the agent's inspection, the principals involved with Renaissance Radio had operated the station for several years.¹⁴ Moreover, promptly correcting violations after they have been identified by an agent, while commendable, is expected and does not warrant a reduction in the forfeiture amount.¹⁵

⁸Section 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).

⁹As 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*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

¹⁰47 C.F.R. § 11.35(a).

¹¹See *supra* note 8.

¹²See *supra* note 9.

¹³See Renaissance Radio Response at 2.

¹⁴Renaissance Radio became the licensee of Station KCAF(AM) on September 30, 2002 when The Watch, Inc. submitted a change of name form. In that form, The Watch, Inc. stated that no transfer of control or ownership had occurred. The Watch, Inc. acquired the station in 1997.

¹⁵See *AM Broadcast Station KTNC and C.R. Communications, Inc.*, DA 99-2960 ¶ 5 (Enf. Bur. 1999); see also *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21861, 21864-75 (2002); *Sonderling Broadcasting Corp.*, 69 FCC 2d 289, 291 (1978); *Odino Joseph*, 18 FCC Rcd 16522, 16524 ¶ 8 (Enf. Bur. 2003); *South Central Communications Corp.*, 18 FCC Rcd 700, 702-03 ¶ 9 (Enf. Bur. 2003); *Northeast Utilities*, 17 FCC Rcd 4115, 4117 ¶ 13 (Enf. Bur. 2002).

9. Finally, Renaissance Radio asserts the forfeiture should be cancelled or reduced because it does not have the “current financial wherewithal to pay any fine.”¹⁶ The Commission has determined that, in general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.¹⁷ After reviewing its bankruptcy filings and financial statements, we agree with Renaissance Radio and are canceling the proposed forfeiture. Nevertheless, we find that it is appropriate to admonish Renaissance Radio¹⁸ for its willful and repeated violation of Sections 11.35(a), 17.51(a), and 73.49 of the Rules.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁹ the forfeiture in the amount of twenty-five thousand dollars (\$25,000) proposed in the April 21, 2003 *Notice of Apparent Liability* issued to Renaissance Radio, Inc. **IS CANCELLED**.

11. **IT IS FURTHER ORDERED** that Renaissance Radio, Inc. **IS ADMONISHED** for failure to maintain operational Emergency Alert System equipment, failure to exhibit all red obstruction lighting on the antenna structure from sunset to sunrise, and failure to maintain an effective locked fence around the base of its AM antenna tower at Station KCAF(AM) in willful and repeated violation of Sections 11.35(a), 17.51(a), and 73.49 of the Rules.

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to David A. Schum, President of Renaissance Radio, Inc., 3301 Northwest Parkway, Dallas, Texas 75225 and to E.P. Keiffer, Esq., Hance, Scarborough, Wright, Ginsberg & Brusilow, 1401 Elm Street, Suite 4750, Dallas, Texas 75202.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁶See Renaissance Radio Response at 3.

¹⁷See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992).

¹⁸Following the *NAL*, Renaissance Radio submitted several short-form applications to transfer or assign Station KCAF(AM). The Watch Ltd. is the current licensee of the station. A Short-Form Application is only used when the transfer does not effect a substantial change in control. See *Grace Missionary Baptist Church*, 80 FCC 2d 330, 336 (1980). Accordingly, this admonishment applies to all common principals associated with Renaissance Radio and The Watch Ltd.

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