

Federal Communications Commission

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

In the Matter of)	File No. EB-02-PA-273
)	
Pentecostal Temple Development Corporation)	NAL/Acct. No. 200332400010
AM Broadcast Station WGBN)	
Pittsburgh, Pennsylvania)	FRN: 0008 2535 44
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 28, 2003

By the District Director, Philadelphia Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Pentecostal Temple Development Corporation ("Pentecostal"), the licensee of AM broadcast station WGBN, has apparently violated Sections 11.35(a), 11.61(a)(1)(v), and 11.61(a)(2)(i)(A) of the Commission's Rules (the "Rules")¹. These sections respectively require that a broadcast station make entries in the station logs indicating the reason why it failed to receive an Emergency Alert System ("EAS") test and that broadcast stations conduct Required Monthly Tests ("RMT") and Required Weekly Tests ("RWT") of the EAS equipment. We conclude that Pentecostal is apparently liable for a forfeiture in the amount of three thousand dollars (\$3,000).

II. BACKGROUND

2. On July 17, 2002, an FCC agent from the Philadelphia Office conducted an inspection of the EAS equipment at radio station WGBN, New Kensington, Pennsylvania. During the inspection, the agent found that Pentecostal failed to receive a RWT from broadcast station WQED between May 2, 2002 and July 17, 2002. Pentecostal made no entries in the WGBN station logs indicating the reasons why it failed to receive the RWT from WQED during this period. The agent also found that Pentecostal failed to transmit a RMT on station WGBN during the months of April 2002, May 2002, and June 2002 and failed to transmit a RWT on station WGBN between April 14, 2002 and July 16, 2002.

3. On July 24, 2002, the Philadelphia Office issued a Notice of Violation to Pentecostal for failure to make entries in the WGBN station logs indicating the reasons why it did not receive a RWT from WQED between May 2, 2002 and July 17, 2002, in violation of Section 11.35(a) of the Rules; failure to transmit a RMT on station WGBN between May 1, 2002 and July 17, 2002, in violation of Section 11.61(a)(1)(v) of the Rules; and failure to transmit a RWT on station WGBN between April 14, 2002 and July 16, 2002, in violation of Section 11.61(a)(2)(i)(A) of the Rules. Pentecostal submitted a response dated August 5, 2002, to the Philadelphia Office addressing the Notice of Violation. In the response, Pentecostal

¹ 47 C.F.R §§ 11.35(a), 11.61(a)(1)(v), and 11.61(a)(2)(i)(A).

acknowledged the violations and listed the corrective measures taken to prevent a reoccurrence. Pentecostal stated that it checked the EAS receivers and tuned them for proper monitoring stations and implemented a new EAS Procedure Sheet. Pentecostal also stated that it would train the staff about EAS operations on a quarterly basis and would more closely monitor the RMT and RWT.

4. On December 3, 2002, an agent re-inspected station WGBN to determine if Pentecostal corrected all the violations. During the inspection, the agent found that Pentecostal failed to receive a RWT from station WQED between July 18, 2002 and September 28, 2002, between October 6, 2002 and November 9, 2002 and between November 24, 2002 and December 3, 2002. Pentecostal failed to make entries in the WGBN station logs indicating the reasons why it failed to receive the RWT from WQED during these periods. The agent also found that Pentecostal failed to transmit a RMT on station WGBN during the months of October 2002 and November 2002 and failed to transmit a RWT on station WGBN between August 4, 2002 and August 17, 2002, between October 13, 2002 and October 26, 2002 and between November 17, 2002 and December 3, 2002. Pentecostal had not implemented the corrective EAS measures they stated in their reply to the July 24, 2002 Notice of Violation.

III. DISCUSSION

5. Section 11.35(a) of the Rules 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. Additionally, broadcast stations must determine the cause of any failure to receive required tests or activations specified in Sections 11.61(a)(1) and (2). Appropriate entries must be made in the broadcast station log as specified in Sections 73.1820 and 73.1840 of this chapter indicating the reasons why any tests were not received.² Between May 2, 2002 and September 28, 2002, between October 6, 2002 and November 9, 2002, between November 24, 2002 and December 3, 2002, Pentecostal failed to receive a RWT from broadcast station WQED. Pentecostal failed to make entries in the WGBN station logs indicating the reasons why it did not receive the RWT from WQED during those periods.

6. Section 11.61(a)(1)(v) of the Rules states that effective January 1, 1997, broadcast stations shall conduct tests of the EAS header codes, Attention Signal, Test Script and End of Message codes once a month. The RMT which shall occur in odd numbered months between 8:30 a.m. and local sunset while the RMT in even numbered months shall occur between local sunset and 8:30 a.m. The tests will originate from EAS Local or State Primary Sources. Broadcast stations must transmit these monthly tests within 60 minutes of receipt. Station logs show that Pentecostal failed to transmit a RMT on station WGBN during the months of April 2002, May 2002, June 2002, July 2002, October 2002 and November 2002.

7. Section 11.61(a)(2)(i)(A) of the Rules states that effective January 1, 1997, broadcast stations shall conduct tests of the EAS Header Codes and End of Message Codes at least once a week at random days and times. Station logs show that Pentecostal failed to transmit a RWT on station WGBN between April 14, 2002 and July 16, 2002, between August 4, 2002 and August 17, 2002, between October 13, 2002 and October 26, 2002, between November 17, 2002 and December 3, 2002.

8. Based on the evidence before us, we find that Pentecostal willfully³ and repeatedly⁴ violated

² 47 CFR §§ 73.1820, and 73.1840.

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate

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Sections 11.61(a)(1)(v), and 11.61(a)(2)(i)(A) of the Rules. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), recon. denied, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*"),⁵ sets the base forfeiture amount for failure to maintain required records at one thousand dollars (\$1,000). The Rules do not establish a base forfeiture amount for violating the Commission's rules requiring EAS tests. Therefore, we must determine an appropriate forfeiture amount for this violation. The requirement that broadcast stations conduct EAS tests is similar in both nature and severity to other required operational performance checks identified in the Rules as required measurements or required monitoring. Section 1.80(b)(4) of the Rules sets the base forfeiture amount at two thousand dollars (\$2,000) for failure to make required measurements or conduct required monitoring. Therefore, we will assess the base forfeiture for failing to conduct EAS tests in the amount of two thousand dollars (\$2,000). In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934,⁶ (the "Act"), as amended, which include 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. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a three thousand dollar (\$3,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended⁷, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules⁸, Pentecostal is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of three thousand dollars (\$3,000) for failing to make entries in the station logs, in violation of Section 11.35(a) of the Rules, failing to transmit the RMT, in violation of Section 11.61(a)(1)(v) of the Rules, and failing to transmit the RWT, in violation of Section 11.61(a)(2)(i)(A) of the Rules.

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Pentecostal SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture 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

commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C § 503(b)(2)(D).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. §§ 0.111, and 0.311.

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Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332400010 and FRN: 0008 2535 44.

12. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200332400010 and FRN: 0008 2535 44.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

15. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

16. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Pentecostal Temple Development Corporation, 6300 East Liberty Boulevard, Pittsburgh, Pennsylvania 15206.

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John E. Rahtes
District Director
Philadelphia Office

Attachment A – FCC’s List for Small Entities

⁹ See 47 C.F.R. § 1.1914.