

Federal Communications Commission

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

In the Matter of)	
)	File No. EB-02-PA-371
)	
Mega Communications of Camden Licensee, L.L.C.)	NAL/Acct. No. 200332400011
WEMG)	
New York, New York)	FRN: 0006-14-5031

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 Mega Communications of Camden Licensee, L.L.C. (“Mega”), the licensee of broadcast station WEMG(AM), Camden, New Jersey, has apparently violated Section 11.35(a) of the Commission’s Rules (the “Rules”).¹ This section requires that stations make entries in the logs indicating the reasons why any Emergency Alert System (“EAS”) tests were not received. We conclude that Mega is apparently liable for a forfeiture in the amount of one thousand dollars (\$1,000).

II. BACKGROUND

2. On November 18, 2002, an agent from the Enforcement Bureau’s Philadelphia Office inspected the EAS equipment of station WEMG. The EAS equipment was located at the station’s main studio at 1080 North Delaware Avenue, Suite 500, Philadelphia, Pennsylvania 19125-4330. During the inspection, the agent found that WEMG was monitoring only one broadcast station for EAS activations. WEMG had connected two radio receivers to the EAS equipment to monitor the broadcasts of stations WKDN and WPST. However, only one radio receiver was properly tuned and monitoring the broadcasts of WKDN. The other radio receiver was not monitoring the broadcasts of any station because the unit’s tuning had drifted.

3. The agent reviewed the EAS logs for station WEMG to determine if it was receiving all of the EAS tests from broadcast stations WKDN and WPST. The agent found that WEMG failed to receive a Required Weekly Test (“RWT”) from WPST between March 13, 2002 and May 12, 2002, between May 15, 2002 and November 2, 2002 and between November 4, 2002 and November 18, 2002. There were no entries in the WEMG station logs explaining the reason why the EAS tests were not received.

¹ 47 C.F.R. § 11.35(a).

III. DISCUSSION

4. Section 11.35 of the Rules requires that AM 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 monitoring and transmitting functions are available during the time the station and system are in operation. Additionally, broadcast stations must determine the cause of any failure to receive tests or activations specified in Section 11.61(a)(1) and (2).² Appropriate entries must be made in the broadcast station log as specified in Section 73.1820 and 73.1840 of this chapter indicating the reasons why any tests were not received.³ WEMG failed to receive a RWT from WPST between March 13, 2002 and May 12, 2002, between May 15, 2002 and November 2, 2002 and between November 4, 2002 and November 18, 2002. There were no entries in the WEMG EAS logs explaining why the EAS tests were not received, or any indication that the station's chief operator or other personnel attempted to identify the source of any problem with the EAS equipment.

5. Based on the evidence before us, we find that WEMG willfully⁴ and repeatedly⁵ violated Section 11.35(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*"),⁶ sets the base forfeiture amount for failure to maintain required records at \$1,000. 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 1934,⁷ (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 one thousand dollar (\$1,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

² 47 C.F.R. §§ 11.61(a)(1), and 11.61(a)(2).

³ 47 C.F.R. §§ 73.1820, and 73.1840.

⁴ 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 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).

⁵ 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.

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C § 503(b)(2)(D).

Federal Communications Commission

6. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁸ and Sections 0.111, 0.311 and 1.80 of the Rules,⁹ Mega is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of one thousand dollars (\$1,000) for its failure to maintain required records.

7. 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, Mega SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

8. 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 Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332400011 and FRN: 0006-14-5031.

9. 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. 200332400011 and FRN: 0006-14-5031.

10. 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.

11. 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. 20554.¹⁰

12. 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

⁸ 47 U.S.C § 503(b).

⁹ 47 C.F.R. §§ 0.111 and 0.311.

¹⁰ See 47 C.F.R. § 1.1914.

Federal Communications Commission

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.

13. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to Mega Communications of Camden Licensee, L.L.C., 8121 Georgia Avenue 10th Floor, Silver Spring, Maryland 20910.

FEDERAL COMMUNICATIONS COMMISSION

John E. Rahtes
District Director
Philadelphia Office

Attachment A – FCC’s List of Small Entities