

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

In the Matter of )

WHYZ Radio, L.P. )  
Radio Station WCSZ (AM) )  
11511 Dyrham Lane )  
Glen Dale, MD 30769 )

File Number: EB-02-AT-128  
NAL/Acct.No.200232480002  
FRN: 0003-7751-78

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: April 18, 2002**

By the Enforcement Bureau, Atlanta Office:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture, we find that WHYZ Radio, L.P. (“WHYZ”) apparently violated Section 11.35(a) of the Commission’s Rules (“Rules”).<sup>1</sup> The violation occurred as a result of the failure of Radio Station WCSZ(AM) to have operational Emergency Alert System (“EAS”) equipment. We conclude that WHYZ Radio, L.P. is apparently liable for a forfeiture in the amount of eight thousand dollars (\$8,000).

**II. BACKGROUND**

2. On April 4, 2002, an agent from the Federal Communications Commission’s (“FCC”) Enforcement Bureau’s Atlanta Office conducted an inspection of the EAS installation of WCSZ(AM). At the time of inspection, the EAS equipment, although present, was not installed and connected so as to be operational. There were no entries in a station log indicating that the EAS equipment had ever been operational or had been taken out of service for repair.

**III. DISCUSSION**

3. Section 11.35(a) of the FCC Rules states that “[b]roadcast 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....”

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<sup>1</sup> 47 C.F.R. § 11.35(a)

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4. Based on the evidence before us, we find that on April 4, 2002, WCSZ willfully<sup>2</sup> violated Section 11.35(a)<sup>3</sup> of the Commission's Rules.

5. Pursuant to Section 1.80(b)(4)<sup>4</sup> of the Rules, the base forfeiture amount for failure to have operational EAS equipment is \$8,000. Section 503(b)(2)(D) of the Act requires us to 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."<sup>5</sup> Considering the entire record and applying the statutory factors listed above, this case warrants an \$8,000 forfeiture.

#### IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended,<sup>6</sup> and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,<sup>7</sup> WHYZ Radio, L.P. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of eight thousand dollars (\$8,000) for failure to have operational EAS equipment.

7. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules,<sup>8</sup> within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, WHYZ Radio, L.P. 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. and FRN referenced in the letterhead above.

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<sup>2</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies equally 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 Red 4387(1991).

<sup>3</sup> 47 C.F.R. § 11.35(a)

<sup>4</sup> 47 C.F.R. § 1.80(b)(4)

<sup>5</sup> 47 U.S.C. § 503(b)(2)(D)

<sup>6</sup> 47 U.S.C. § 503(b)

<sup>7</sup> 47 C.F.R. § § 0.111,0.311, 1.80

<sup>8</sup> 47 C.F.R. § 1.80

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9. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE NAL/Acct. No. and FRN referenced in the letterhead above.

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: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>9</sup>

IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to WHYZ Radio, L.P. at 11511 Dyrham Lane, Glen Dale, Maryland 30769. An additional copy shall be sent by Certified Mail Return Receipt Requested to WCSZ (AM) at 200 N. Hwy. 25 Bypass, Greenville, South Carolina 29617.

FEDERAL COMMUNICATIONS COMMISSION

Fred L. Broce  
District Director  
Atlanta Office, Enforcement Bureau

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<sup>9</sup> See 47 C.F.R. § 1.1914