

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

In the Matter of)	File Number EB-03-TP-192
)	
Blountstown Communications, Inc.)	NAL/Acct.No. 200432700006
Licensee of Radio Stations WYBT (AM) &)	FRN 0000040428
WPHK (FM))	
Blountstown, Florida)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 16, 2003

By the Enforcement Bureau, Tampa Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Blountstown Communications, Inc. (“Blountstown”), licensee of AM radio station WYBT and FM radio station WPHK, Blountstown, Florida, apparently liable for a forfeiture in the amount of twenty-five thousand dollars (\$25,000) for willful violation of Sections 11.35, 73.49 and 73.3526(c) of the Commission’s Rules (“Rules”).¹ Specifically, we find Blountstown apparently liable for failing to ensure that the Emergency Alert System (“EAS”) equipment was operational, failing to enclose the base of the antenna system with a fence and failing to make available a complete public file.

II. BACKGROUND

2. On April 7, 2003, agents from the FCC Enforcement Bureau’s Tampa Field Office (“Tampa Office”) inspected station WYBT (AM) and WPHK (FM) in Blountstown, Florida. The agents found the station’s EAS equipment inoperative, the antenna system’s high RF potential exposed and accessible and a public file which consisted only of a FCC station license and tower registration.

III. DISCUSSION

4. Section 11.35 of the Rules requires broadcast stations to ensure that their EAS equipment is operational at all times the station is on the air. On April 7, 2003, the EAS equipment was not operational and the last evidence of operation in the EAS log was dated April 1999. In addition, station records contained no entries indicating the EAS equipment had been removed from service for repair.

5. Section 73.49 of the Rules requires AM station towers with radio frequency potential at the base (Series Fed, Folded unipole and insulated base antennas) to be enclosed with effective locked fences or other enclosures. On April 7, 2003, there was no fence around the folded unipole antenna and according to the station’s management, a fence was never constructed when the new tower was built in April 2002.

¹ 47 C.F.R. §§ 11.35, 73.49 & 73.3526(c).

6. Section 73.3526(a)(2) of the Rules² requires that every permittee or licensee of an AM, FM, TV or Class A TV station in the commercial broadcast services shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(1) through (e)(10) and paragraph (e)(13) of this section. Section 73.3526(c) requires the public file be available for public inspection at any time during regular business hours. On April 7, 2003, during regular business hours, the only documents available in the public file folder were the FCC station license and antenna tower registration.

7. Based on the evidence before us, we find that Blountstown willfully³ violated Section 11.35, 73.49 and 73.3526(c) of the Rules by failing to ensure the operation of the EAS equipment, failing to enclose the base of the antenna system in a fence and failing to make available a complete public file.

8. Section 1.80(b)(4) of the Rules⁴ sets forth the base forfeiture amounts for various violations of the Commission's Rules. Section 1.80(b)(4) of the Rules sets the base forfeiture amount at \$8,000 for EAS violations, \$7,000 for tower fencing violations and \$10,000 for public file violations. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), 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."⁵ Considering the entire record and applying the factors listed above, this case warrants a \$25,000 forfeiture.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁶ and Sections 0.111, 0.311 and 1.80 of the Rules,⁷ Blountstown . is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of twenty-five thousand dollars (\$25,000) for willful violation of Sections 11.35, 73.49 and 73.3526(c) of the Rules by failing to ensure that their EAS equipment was operational, failure to enclose the base of the tower with a fence and failure to make available a complete public inspection file. .

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Blountstown 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

² 47 C.F.R. § 73.3526(a)(2).

³ 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,' 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).

⁴ 47 C.F.R. § 1.80(b)(4).

⁵ 47 U.S.C. § 503 (b)(2)(D).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80.

Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Request for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

12. The response, if any, must be mailed to **Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Spectrum Enforcement Division**, and MUST INCLUDE THE NAL/Acct. No. and FRN referenced above.

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. 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 Spectrum Enforcement 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.

15. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Blountstown Communications, Inc., 20872 N.E. Kelly Avenue, Blountstown, FL 32424.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow
District Director, Tampa Office

Attachment

⁸ See 47 C.F.R. § 1.1914.