

Federal Communications Commission

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

In the Matter of)	File No. EB-03-NY-080
)	File No. EB-03-NY-081
Kimtron, Inc.)	
WPTR)	NAL/Acct. No. 200432380006
WDCD-FM)	
Blue Bell, PA)	FRN: 0003 4129 62

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: January 13, 2004

By the District Director, New York Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Kimtron, Inc. ("Kimtron"), licensee of radio stations, WPTR and WDCD-FM, has apparently violated Sections 11.35(a), 11.61(a)(1)(i), and 11.61(a)(2)(i)(A) of the Commission's Rules (the "Rules"),¹ by failing to conduct required monthly and weekly tests of the Emergency Alert System ("EAS") and failing to maintain station records of required monthly and weekly EAS test messages. We conclude that Kimtron is apparently liable for a forfeiture in the amount of six thousand dollars (\$6,000).

II. BACKGROUND

2. On June 4, 2003, a Commission agent conducted an inspection of radio stations, WPTR and WDCD-FM's EAS, located at 4243 Albany Street, Albany, NY 12205. The two radio stations, serving different communities, were using the same EAS system. Based upon the agent's inspection of WPTR and WDCD-FM's station records, it was determined that WPTR and WDCD-FM failed to conduct required monthly tests of the EAS header codes, Attention Signal, Test Script, and EOM code for the months of December 2002, January 2003, and March 2003, and failed to conduct required weekly tests of the EAS header and EOM codes for the weeks of December 1, 2002 to January 11, 2003, January 19-25, 2003, February 9-15, 2003, February 23, 2003 to March 15, 2003, April 6-19, 2003, April 27, 2003 to May 3, 2003, and May 18-31, 2003. WPTR and WDCD-FM failed to maintain EAS equipment so that it is capable of receiving monthly EAS test messages for the months of December 2002, January 2003, and March 2003, and receiving weekly EAS test messages for the weeks of December 1, 2002 to January 25, 2003, February 23, 2003 to March 8, 2003, March 30, 2003 to April 5, 2003, April 13-19, 2003, April 27, 2003 to May 3, 2003, and May 11-24, 2003. The agent also found that WPTR and WDCD-FM failed to maintain station records of required monthly EAS tests received for the months of December 2002, January 2003, and March 2003, and state reasons why EAS tests were not received, failed to maintain station records of required weekly EAS

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

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tests received for the weeks of December 1, 2002 to January 25, 2003, February 23, 2003 to March 8, 2003, March 30, 2003 to April 5, 2003, April 13-19, 2003, April 27, 2003 to May 3, 2003, and May 11-24, 2003, and state reasons why EAS tests were not received.

III. DISCUSSION

3. Section 11.35(a) of the Rules requires broadcast stations to make entries in station records of monthly and weekly EAS tests received. Entries were not made in WPTR and WDCD-FM's station records of monthly EAS tests received for the months of December 2002, January 2003, and March 2003, and no entries were made in the station records of weekly EAS tests received for the weeks of December 1, 2002 to January 25, 2003, February 23, 2003 to March 8, 2003, March 30, 2003 to April 5, 2003, April 13-19, 2003, April 27, 2003 to May 3, 2003, and May 11-24, 2003, or reasons why required monthly and weekly EAS tests were not received.

4. Section 11.61(a)(1)(i) of Rules requires broadcast stations to conduct required monthly tests of the EAS header codes, Attention Signal, Test Script, and EOM code that conforms to procedures in the EAS Operating Handbook, and Section 11.61(a)(1)(v)². WPTR and WDCD-FM's station records failed to show that required monthly tests of the EAS header codes, Attention Signal, Test Script, and EOM code were conducted for the months of December 2002, January 2003, and March 2003.

5. Section 11.61(a)(2)(i)(A) of the Rules requires broadcast stations to conduct required weekly tests of the EAS header and EOM codes at least once a week at random days and times. WPTR and WDCD-FM's station records failed to show that required weekly tests of the EAS header and EOM codes were conducted for the weeks of December 1, 2002 to January 11, 2003, January 19-25, 2003, February 9-15, 2003, February 23, 2003 to March 15, 2003, April 6-19, 2003, April 27, 2003 to May 3, 2003, and May 18-31, 2003.

6. Based on the evidence before us, we find that, Kimtron willfully³ and repeatedly⁴ violated Sections 11.35(a), 11.61(a)(1)(i), and 11.61(a)(2)(i)(A) of the Rules by failing to conduct required monthly tests of the EAS header codes, Attention Signal, Test Script, and EOM code for the months of December 2002, January 2003, and March 2003, failing to conduct required weekly tests of the EAS header and EOM codes for the weeks of December 1, 2002 to January 11, 2003, January 19-25, 2003, February 9-15, 2003, February 23, 2003 to March 15, 2003, April 6-19, 2003, April 27, 2003 to May 3, 2003, and May 18-31, 2003, and failing to log entries of reasons why required monthly EAS tests were not received for the months of December 2002, January 2003, and March 2003, and failing to log entries of reasons why required weekly EAS tests were not received for the weeks of December 1, 2002 to January 25, 2003, February 23, 2003 to March 8, 2003, March 30, 2003 to April 5, 2003, April 13-19, 2003, April 27, 2003 to May 3, 2003, and May 11-24, 2003.

² 47 C.F.R. § 11.61(a)(1)(v).

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 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.

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7. *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 make required measurements or conduct required monitoring at \$2,000 (\$2,000 for each of Kimtron's two radio stations), and base forfeiture for failure to maintain required records at \$1,000 (\$1,000 for each of Kimtron's two radio stations). 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, as amended,⁶ ("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. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a six thousand dollar (\$6,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended,⁷ ("Act") and Sections 0.111, 0.311 and 1.80 of the Rules⁸, Kimtron is hereby NOTIFIED of their APPARENT LIABILITY FOR A FORFEITURE in the amount of six thousand dollars (\$6,000) for willful and repeated violations of Sections 11.35(a), 11.61(a)(1)(i), and 11.61(a)(2)(i)(A) of the Rules.

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

10. 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. 200432380006 and FRN: 0003 4129 62.

11. Any response to this NAL must be mailed to Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Washington, D.C. 20554, and MUST INCLUDE THE NAL/Acct. No. 200432380006.

12. 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.

⁵47 C.F.R. § 1.80.

⁶47 U.S.C. § 503(b)(2)(D).

⁷ 47 U.S.C. § 503(b)

⁸47 C.F.R. §§ 0.111, and 0.311.

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Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

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

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 NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Kimtron, Inc., P.O. Box 3003, Blue Bell, PA 19422.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel
District Director
New York Office

Attachment A – FCC List of Small Entities, October 2002

⁹ See 47 C.F.R. § 1.1914.