

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

In the Matter of)	
)	File No. EB-00-BS-106
Radio One Licenses, Inc.)	
)	NAL/Acct. No. 20013226001
Licensee of Station WBOT(FM))	
)	FRN 0003-7390-34
Brockton, Massachusetts)	

MEMORANDUM OPINION AND ORDER

Adopted: November 20, 2003

Released: December 3, 2003

By the Commission:

1. In this *Memorandum Opinion and Order* (“*Order*”) we deny the August 20, 2003 Petition for Reconsideration filed by Radio One Licenses, LLC (“Radio One”), licensee of WBOT(FM),¹ Brockton, Massachusetts, of the July 22, 2003 *Memorandum Opinion and Order* ² (“*MO&O*”) issued in this proceeding. The *MO&O* imposed a forfeiture of \$8,000 against Radio One for willful violations of the following sections of the Commission’s Rules (“the Rules”): 11.35(a) (failure to have operational Emergency Alert System (“EAS”) equipment); 73.1125(e) (failure to establish a local or toll-free telephone number in the community of license); 73.1350(c)(1) (failure to establish monitoring procedures to determine compliance with Section 73.1560 regarding operating power); and 73.1800(a) (failure to maintain a station log).³

2. Radio One now asserts that its forfeiture should be cancelled because “newly available evidence” suggests that the Bureau applied its forfeiture policies inconsistently to the detriment of Radio One. Specifically, Radio One claims that the Bureau treated it differently than American Family Association, Inc. (“AFA”) because it proposed a \$4,000 forfeiture against AFA for failure to have operational EAS equipment,⁴ but originally proposed and assessed an \$8,000 forfeiture against Radio One (as part of a larger amount involving other violations) for its failure to have operational EAS equipment. Radio One claims that the circumstances underlying the issuance of the forfeiture are substantially similar to the circumstances of the *AFA* case. Further, Radio One claims that “there is no indication why AFA was treated more leniently, and Radio One more punitively, for an alleged violation of the same rule

¹ At the time this matter was initiated, Radio One Licenses, Inc. was the licensee of WBOT(FM). Effective December 31, 2001, Radio One Licenses, LLC became the licensee of WBOT(FM).

² *Radio One Licenses, Inc.*, 18 FCC Rcd 15964 (2003).

³ 47 C.F.R. §§ 11.35(a), 73.1125(e), 73.1350(c)(1), 73.1560, and 73.1800(a).

⁴ See *American Family Association, Inc.*, NAL/Acct. No. 200232560027 (Enf. Bur., Kansas City Office rel. September 23, 2002) (“*AFA NAL*”); *forfeiture cancelled and licensee admonished for other reasons*, 18 FCC Rcd 16530 (Enf. Bur. 2003). In the cancellation order, the Bureau found that no EAS violation occurred.

under substantially similar facts” and cites to *Melody Music, Inc. v. FCC*⁵ for its prohibition against treating similarly situated parties differently without an explanation.

3. Radio One’s argument lacks merit. As a preliminary matter, the alleged EAS violation in the *AFA* case was less serious than the one here. In the *AFA* case, the licensee had EAS equipment installed at station KAUF-FM but the equipment was turned off at the time of inspection while it was undergoing repair. Here, Radio One had *no* EAS equipment (operational or otherwise) installed at station WBOT(FM). Moreover, with respect to Radio One’s challenge to the Bureau’s original proposal of an \$8,000 forfeiture for the EAS violation, we note that what is relevant at this point is the forfeiture that we have imposed, not what the Bureau originally proposed. We also note that even if the amount of our forfeiture attributable to the EAS violation (\$5,200)⁶ is too high, Radio One has not explained why that portion of the forfeiture should be cancelled rather than reduced to \$4,000 or why the remaining \$2,800 of the forfeiture not attributable to EAS should be affected at all. Accordingly, we appropriately assessed a \$5,200 forfeiture for the EAS violation rather than a \$4,000 forfeiture.

4. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended (“the Act”)⁷ and Section 1.106 of the Rules,⁸ the Petition for Reconsideration filed by Radio One Licenses, LLC of the Commission’s July 22, 2003 *Memorandum Opinion and Order* for NAL No. 200132260001 **IS** hereby **DENIED**.

5. **IT IS FURTHER ORDERED** that, pursuant to Section 503(b) of the Act⁹ and Section 1.80 of the Rules,¹⁰ Radio One Licenses, LLC shall pay the amount of eight thousand dollars (\$8,000) for the above-stated violations within 30 days of the release date of this *Order*. Payment may be made by check or money order, drawn on a U.S. financial institution, payable to the Federal Communications Commission. The remittance should be marked “NAL/Acct. No. 200132260001, FRN 0003-7390-34” and mailed to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹¹ Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 Twelfth Street, S.W., Washington, D.C. 20554.¹²

⁵ 345 F.2d 730 (D.C. Cir. 1965).

⁶ The Bureau originally imposed an \$11,500 forfeiture for the four violations at issue here, including the \$8,000 base amount for the EAS violation, and then reduced the forfeiture by 20% for Radio One’s history of overall compliance to a total of \$9,200, including \$6,400 for the EAS violation. *Radio One Licenses, Inc.*, 17 FCC Rcd 20408 (Enf. Bur. 2002). In the *MO&O*, based on Radio One’s good faith (albeit deficient) attempts to comply with the EAS rule, we further reduced the forfeiture to \$8,000, including \$5,200 for the EAS violation.

⁷ 47 U.S.C. § 405.

⁸ 47 C.F.R. § 1.106.

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 C.F.R. § 1.80.

¹¹ 47 U.S.C. § 504(a).

¹² 47 C.F.R. § 1.1914.

6. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by regular mail and Certified Mail Return Receipt Requested to Pamela C. Cooper, Esq., counsel for Radio One Licenses, LLC, at Davis Wright Tremaine, 1500 K Street, NW, Suite 450, Washington, DC 20005.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary