

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

In the Matter of	)	
	)	
Rosendo Casarez, Jr.	)	File No.: EB-11-SD-0125
	)	NAL/Acct. No.: 201232940002
Licensee of Station KCRX(AM)	)	FRN: 0006903041
Roswell, NM	)	Facility ID No.: 57700
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER**

**Adopted: January 30, 2012**

**Released: January 31, 2012**

By the District Director, San Diego Office, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Rosendo Casarez, Jr. (Casarez), licensee of Station KCRX(AM), in Roswell, New Mexico, apparently willfully and repeatedly violated Section 11.35 of the Commission's rules (Rules)<sup>1</sup> by failing to ensure the operational readiness of the Station KCRX(AM) Emergency Alert System (EAS) equipment. We conclude that Casarez is apparently liable for a forfeiture in the amount of eight thousand dollars (\$8,000). In addition, we direct Casarez to submit, no later than thirty (30) calendar days from the date of this NAL, a statement signed under penalty of perjury stating that the Station KCRX(AM) EAS equipment is operating consistent with Section 11.35 of the Rules.

**II. BACKGROUND**

2. On June 21, 2011, an agent from the Enforcement Bureau's San Diego Office (San Diego Office) conducted an inspection at Station KCRX(AM)'s main studio located in Roswell, New Mexico. The agent observed that although Station KCRX(AM) had EAS equipment, the equipment was not installed and not operational. Specifically, the equipment was not capable of receiving the required tests and Casarez was unable to produce any documentation, logs, or records for the agent showing that required EAS weekly or monthly tests had been sent or received.<sup>2</sup> Casarez also informed the agent that the station's EAS equipment had not been operational since approximately eight months prior, when the EAS equipment was damaged due to water leaking into the station's main studio after a heavy rain storm.

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<sup>1</sup> 47 C.F.R. § 11.35.

<sup>2</sup> See 47 C.F.R. § 11.61(a)(1) ("Required Monthly Tests of the EAS header codes, Attention Signal, Test Script and [End of Message] code . . . must be transmitted within 60 minutes of receipt by EAS Participants in an EAS Local Area or State."); 47 C.F.R. § 11.61(a)(2) ("Required Weekly Tests: . . . Analog and digital AM, FM and TV broadcast stations must conduct tests of the EAS header and [End of Message] codes at least once a week at random days and times").

### III. DISCUSSION

3. Section 503(b) of the Communications Act of 1934, as amended (Act),<sup>3</sup> provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. Section 312(f)(1) of the Act defines “willful” as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.<sup>4</sup> The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Section 312 and 503(b) of the Act<sup>5</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>6</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>7</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>8</sup>

#### A. Failure to Maintain Operational Readiness of Emergency Alert System Equipment

4. Every broadcast station is part of the nationwide EAS network and is categorized as a participating national EAS source unless the station affirmatively requests authority to refrain from participation, and that request is approved by the Commission.<sup>9</sup> The EAS enables the President and state and local governments to provide immediate and emergency communications and information to the general public.<sup>10</sup> State and local area plans identify local primary sources responsible for coordinating carriage of common emergency messages from sources such as the National Weather Service or local emergency management officials.<sup>11</sup> Required monthly and weekly tests originate from EAS Local or State Primary sources and must be retransmitted by the participating station.

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<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> 47 U.S.C. § 312(f)(1).

<sup>5</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982) (“This provision [inserted in Section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of Section 312, and for any other relevant section of the act (e.g., Section 503) . . . . As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission’s application of those terms . . . .”).

<sup>6</sup> See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454.

<sup>7</sup> See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

<sup>8</sup> Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[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.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

<sup>9</sup> 47 C.F.R. §§ 11.11, 11.19, 11.41.

<sup>10</sup> 47 C.F.R. §§ 11.1, 11.21.

<sup>11</sup> 47 C.F.R. § 11.18. State EAS plans contain guidelines that must be followed by broadcast and cable personnel, emergency officials and National Weather Service personnel to activate the EAS for state and local emergency alerts. The state plans include the EAS header codes and messages to be transmitted by the primary state, local, and relay EAS sources. 47 C.F.R. § 11.21.

5. As the nation's emergency warning system, the Emergency Alert System is critical to public safety, and we recognize the vital role that broadcasters play in ensuring its success. The Commission takes seriously any violations of the Rules implementing the EAS and expects full compliance from its licensees. Section 11.35 of the Rules requires all broadcast stations to ensure that EAS encoders, EAS decoders, and attention signal generating and receiving equipment are installed and operational so that the monitoring and transmitting functions are available during the times the station is in operation.<sup>12</sup> Broadcast stations must also determine the cause of any failure to receive required monthly and weekly EAS tests, and must indicate in the station's log why any required tests were not received, and when defective equipment is removed and restored to service.<sup>13</sup>

6. On June 21, 2011, an agent from the San Diego Office inspected Station KCRX(AM)'s EAS equipment and found that it was not operational. The EAS equipment was unable to receive the required tests and Casarez, the Station KCRX(AM) licensee, was unable to produce documentation, logs, or records concerning EAS tests successfully or unsuccessfully received or sent. Casarez acknowledged to the San Diego agent that the Station KCRX(AM) EAS equipment had not been operational since heavy rain storms leaked through the roof of the station's main studio approximately eight months prior to the inspection. Based on the evidence before us, we find that Casarez apparently willfully and repeatedly violated Section 11.35 of the Rules by failing to ensure the operational readiness of the Station KCRX(AM) EAS equipment.

#### **B. Proposed Forfeiture Amount and Reporting Requirement**

7. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for EAS equipment not installed or operational is \$8,000.<sup>14</sup> In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, 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>15</sup> Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Casarez is apparently liable for a forfeiture of \$8,000 for his violation of Section 11.35 of the Rules.

8. We further order Casarez to submit a written statement pursuant to Section 1.16 of the Rules<sup>16</sup> signed under penalty of perjury by Casarez stating that Station KCRX(AM) is now in compliance with Section 11.35 of the Rules. This statement must be provided to the San Diego Office at the address listed in paragraph 11 within thirty (30) calendar days of the release of this NAL.

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<sup>12</sup> 47 C.F.R. § 11.35.

<sup>13</sup> 47 C.F.R. § 11.35(a) – (b). An EAS Participant may operate without the defective equipment pending its repair or replacement for 60 days without further FCC authority. *See* 47 C.F.R. § 11.35(b). If the repair or replacement of defective equipment is not completed within 60 days, an EAS Participant shall submit an informal request to the District Director of the local FCC field office for additional time to repair the defective equipment. *See* 47 C.F.R. § 11.35(c). No such request was submitted by Casarez to the San Diego Office.

<sup>14</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recons. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

<sup>15</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>16</sup> 47 C.F.R. § 1.16.

#### IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Commission's rules, Rosendo Casarez, Jr., is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of eight thousand dollars (\$8,000) for violation of Section 11.35 of the Rules.<sup>17</sup>

10. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Rosendo Casarez, Jr., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. **IT IS FURTHER ORDERED** that Rosendo Casarez, Jr., **SHALL SUBMIT** a written statement, as described in paragraph 8, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order. The statement must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, San Diego Office, 4542 Ruffner Street, Rm. 370, San Diego, CA, 92111. Casarez shall also email the written statement to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov).

12. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank - Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>18</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov). Casarez will also send electronic notification on the date said payment is made to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov).

13. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80(f)(3) and 1.16 of the Rules.<sup>19</sup> Mail the written statement to Federal Communications Commission, Enforcement Bureau, Western Region, San Diego Office, 4542 Ruffner Street, Rm. 370, San Diego, CA, 92111, and include the NAL/Acct. No. referenced in the caption. Casarez shall also email the written response to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov).

14. 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.

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<sup>17</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 11.35.

<sup>18</sup> See 47 C.F.R. § 1.1914.

<sup>19</sup> 47 C.F.R. §§ 1.16, 1.80(f)(3).

15. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to Rosendo Casarez, Jr., P.O. Box 2052, Roswell, NM 88201.

FEDERAL COMMUNICATIONS COMMISSION

James T. Lyon  
District Director  
San Diego Office  
Western Region  
Enforcement Bureau