

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

In the Matter of)	
)	
Centro Colegial Cristiano, Inc.)	File No.: EB-FIELDSCR-12-00001943
)	NAL/Acct. No.: 201332680001
Licensee of FM Station WVVD)	FRN: 0001729490
Anasco, Puerto Rico)	Facility ID No.: 10053
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: January 24, 2013

Released: January 24, 2013

By the Resident Agent, San Juan Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Centro Colegial Cristiano, Inc. (Centro Colegial), licensee of FM Station WVVD in Anasco, Puerto Rico, apparently willfully and repeatedly violated Sections 11.35(a), 11.51(m)(1), and 11.52(e)(1) of the Commission's rules (Rules),¹ by failing to maintain fully operational emergency alert system (EAS) equipment when the Station was unattended. We conclude that Centro Colegial is apparently liable for a forfeiture in the amount of eight thousand dollars (\$8,000).

II. BACKGROUND

2. On April 30, 2012, in response to a complaint, agents from the Enforcement Bureau's San Juan Office (San Juan Office) inspected the main studio for Station WVVD and observed that the Station's EAS equipment, although operational, was unable to automatically interrupt programming to transmit an EAS message due to the way it was installed. The director for the station admitted and demonstrated to the agents that the EAS equipment was incapable of transmitting an EAS message without a person manually reducing the on-air programming volume down to zero or mute. The director did not know how long the EAS equipment had been in this condition, but he was certain that it had required manual intervention since he became director in September 2011. The director also informed the agents that the Station broadcasts programming 24 hours a day, is manned daily from 6 A.M. to 7 P.M., and is unattended daily from 7 P.M. to 6 A.M. and during lunch and other breaks.

III. DISCUSSION

3. Section 503(b) of the Communications Act of 1934, as amended (Act), 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.² Section 312(f)(1) of the Act defines "willful" as the "conscious and deliberate commission or omission of [any]

¹ 47 C.F.R. §§ 11.35(a), 11.51(m)(1), 11.52(e)(1).

² 47 U.S.C. § 503(b).

act, irrespective of any intent to violate” the law.³ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,⁴ and the Commission has so interpreted the term in the Section 503(b) context.⁵ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁶ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁷

A. Failure to Maintain Operational Emergency Alert System

4. Every broadcast station is part of the nationwide EAS network and is categorized as a participating national EAS source.⁸ The EAS enables the President and state and local governments to provide immediate communications and information to the general public.⁹ State and local area plans identify local primary sources responsible for coordinating carriage of common emergency messages from the sources such as the National Weather Service or local emergency management officials.¹⁰ Required monthly and weekly tests originate from EAS Local or State Primary sources and must be retransmitted by the participating station. As the nation’s emergency warning system, the EAS 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.

5. Section 11.35(a) 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.¹¹ Sections 11.51(m) and 11.52(e) of the Rules also require broadcast station licensees to receive, interrupt

³ 47 U.S.C. § 312(f)(1).

⁴ H.R. Rep. No. 97-765, 97th 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”).

⁵ 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 (1992).

⁶ 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).

⁷ 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.

⁸ 47 C.F.R. §§ 11.11, 11.41.

⁹ 47 C.F.R. §§ 11.1, 11.21.

¹⁰ 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.

¹¹ 47 C.F.R. § 11.35(a).

normal programming, and transmit certain EAS messages.¹² When facilities are unattended, Sections 11.51(m)(1) and 11.52(e)(1) of the Rules require licensees to employ automatic systems to interrupt programming and transmit certain EAS messages.¹³

6. On April 30, 2012, agents from the San Juan Office observed that Station WVID's EAS equipment was unable to interrupt programming and transmit automatically an EAS message. Station WVID broadcasts programming 24 hours a day, but is not staffed 24 hours a day. When unattended, Station WVID was unable to interrupt normal programming or transmit EAS messages. Accordingly, the transmitting function for Station WVID's EAS equipment was not fully operational, when the Station was unattended. According to Station management, the EAS equipment had been unable to interrupt programming and transmit EAS messages automatically since sometime in September 2011. Based on the evidence before us, we find that Centro Colegial apparently willfully and repeatedly violated Sections 11.35(a), 11.51(m)(1), and 11.52(e)(1) of the Rules by failing to maintain fully operational EAS equipment at Station WVID when the station was operational and unattended.

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 failure to maintain the EAS equipment operational readiness is \$8,000.¹⁴ 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.¹⁵ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Centro Colegial is apparently liable for a total forfeiture in the amount of \$8,000.

8. We also direct Centro Colegial to submit a written statement signed under penalty of perjury, pursuant to Section 1.16 of the Rules,¹⁶ by an officer or director of Centro Colegial, stating that its EAS equipment is fully operational when Station WVID is unattended and that it otherwise complies with the Commission's EAS rules. This statement must be provided to the San Juan Office at the address listed in paragraph 11 below, within thirty (30) calendar days of the release date of this NAL.

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, Centro Colegial Cristiano, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of eight thousand dollars (\$8,000) for violation of Sections 11.35(a), 11.51(m)(1), and 11.52(e)(1) of the Commission's rules.¹⁷

¹²See 47 C.F.R. §§ 11.51(m), 11.52(e).

¹³See 47 C.F.R. §§ 11.51(m)(1), 11.52(e)(1).

¹⁴ *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.

¹⁵ 47 U.S.C. § 503(b)(2)(E).

¹⁶ 47 C.F.R. § 1.16.

¹⁷ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 11.35(a), 11.51(m)(1), 11.52(e)(1).

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, Centro Colegial Cristiano, Inc. **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 Centro Colegial Cristiano, Inc. **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, South Central Region, San Juan Office, US Federal Building Room 762, San Juan, PR 00918-1731. Centro Colegial Cristiano, Inc. shall also e-mail the written statement to SCR-Response@fcc.gov.

12. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Centro Colegial Cristiano, Inc. will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁸ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

13. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁹ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

14. 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 1.16 and 1.80(f)(3) of the Rules.²⁰ Mail the written statement to Federal Communications

¹⁸ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹⁹ See 47 C.F.R. § 1.1914.

²⁰ 47 C.F.R. §§ 1.16, 1.80(f)(3).

Commission, Enforcement Bureau, South Central Region, San Juan Office, US Federal Building Room 762, San Juan, PR 00918-1731 and include the NAL/Acct. No. referenced in the caption. Centro Colegial Cristiano, Inc. also shall e-mail the written response to SCR-Response@fcc.gov.

15. 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.

16. **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 First Class Mail to Centro Colegial Cristiano, Inc. at POB 3420, Mayaguez, PR 00681-3420.

FEDERAL COMMUNICATIONS COMMISSION

Reuben Jusino
Resident Agent
San Juan Office
South Central Region
Enforcement Bureau