

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

In the Matter of)	
)	
Inter-city Christian Youth Program, Inc.)	File No.: EB-FIELDSCR-12-00001738
)	NAL/Acct. No.: 201232540008
Licensee of Station KCYP-LP)	FRN: 0016085474
Mission, Texas)	Facility ID No.: 135621
)	

FORFEITURE ORDER

Adopted: March 7, 2013

Released: March 7, 2013

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of one thousand seven hundred fifty dollars (\$1,750) to Inter-city Christian Youth Program, Inc. (ICYP), licensee of low power FM Station KCYP-LP in Mission, Texas (Station), for willfully and repeatedly violating Section 11.35(a) of the Commission's rules (Rules).¹ The noted violations involved ICYP's failure to install and maintain operational Emergency Alert System (EAS) equipment.

II. BACKGROUND

2. On August 15, 2012, the Enforcement Bureau's Houston Office (Houston Office) issued a Notice of Apparent Liability for Forfeiture and Order (NAL)² to ICYP for its failure to install EAS equipment. In response to the NAL, ICYP requests cancellation of the forfeiture due to its inability to pay the forfeiture.³ ICYP also states that following the agent's inspection the Station installed an operational EAS decoder.⁴

III. DISCUSSION

3. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),⁵ Section 1.80 of the Rules,⁶ and the

¹ 47 C.F.R. § 11.35(a).

² *Inter-city Christian Youth Program, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 9364 (Enf. Bur. 2012). A comprehensive recitation of the facts and history of this case can be found in the NAL and is incorporated herein by reference.

³ Letter from Joe L. Martinez, President, Inter-city Christian Youth Project, Inc., to Houston Office, Enforcement Bureau at 1-2 (Sept. 1, 2012) (on file in EB-FIELDSCR-12-00001738) (*NAL Response*).

⁴ *Id.* at 1.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

*Forfeiture Policy Statement.*⁷ In examining ICYP's response, Section 503(b)(2)(E) of the Act requires that the Commission take into account 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.⁸ As discussed below, we have considered ICYP's response in light of these statutory factors and find that a reduction of the forfeiture is warranted.

4. First, we affirm the *NAL*'s undisputed finding that ICYP willfully and repeatedly violated Section 11.35(a) of the Rules.⁹ 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.¹⁰ Section 73.1820(a)(1)(iii) of the Rules requires licensees to create an entry for each test and activation of the EAS in the station log or in a special EAS log.¹¹ As discussed in the *NAL*, on March 29, 2012, an agent from the Houston Office inspected Station KCYP-LP and observed that the Station did not have EAS equipment installed while it was in operation. In addition, the Station could not provide any evidence or EAS logs documenting that it had operational EAS equipment installed or that it had ever conducted any of the required weekly or monthly EAS tests.¹² In response to the *NAL*, ICYP apologized for its lack of EAS equipment and stated that it was unaware that low power FM stations were required to have EAS equipment but that it has since purchased and installed an EAS decoder.¹³ Thus, based on the evidence before us, we conclude that ICYP willfully and repeatedly violated Section 11.35(a) of the Rules by failing to install and maintain operational EAS equipment.

5. In response to the *NAL*, ICYP also requests cancellation of the proposed forfeiture based on its inability to pay. With regard to an individual or entity's inability to pay claim, the Commission has determined that, in general, gross revenues are the best indicator of an ability to pay a forfeiture.¹⁴ Based on the financial documents provided by ICYP, we conclude that a reduction of the forfeiture to \$1,750 is warranted.¹⁵ However, we caution ICYP that a party's inability to pay is only one factor in our forfeiture calculation analysis, and is not dispositive.¹⁶ We have previously rejected inability to pay claims in cases

⁷ *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), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ See *NAL*, *supra* note 2.

¹⁰ 47 C.F.R. § 11.35(a). Low power FM stations are not required to have an EAS encoder. See 47 C.F.R. § 11.11(a).

¹¹ 47 C.F.R. § 73.1820(a)(1)(iii). See also 47 C.F.R. § 11.35 (requiring licensees to record in EAS log the cause of any failure to receive any EAS tests and when defective EAS equipment is removed from service).

¹² 47 C.F.R. § 11.61.

¹³ *NAL Response* at 1.

¹⁴ See *PJB Communications of Virginia, Inc.*, Forfeiture Order, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, Forfeiture Order, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, Forfeiture Order, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

¹⁵ This forfeiture falls within the percentage range that the Commission has previously found to be not excessive.

¹⁶ See 47 U.S.C. § 503(b)(2)(E) (requiring Commission to take into account 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 such other matters as justice may require).

of repeated or otherwise egregious violations.¹⁷ Therefore, future violations of this kind may result in significantly higher forfeitures that may not be reduced due to ICYP's financial circumstances.

IV. ORDERING CLAUSES

6. 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(f)(4) of the Commission's rules, Inter-city Christian Youth Program, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one thousand seven hundred fifty dollars (\$1,750) for violations of Section 11.35(a) of the Commission's rules.¹⁸

7. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.¹⁹ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.²⁰ Inter-city Christian Youth Program, Inc. shall send electronic notification of payment to SCR-Response@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²¹ 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.

¹⁷ *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840 (Enf. Bur., Western Region 2011) (holding that violator's repeated acts of malicious and intentional interference outweigh evidence concerning his ability to pay) (petition for reconsideration pending); *Hodson Broadcasting Corp.*, Forfeiture Order, 24 FCC Rcd 13699 (Enf. Bur. 2009) (holding that permittee's continued operation at variance with its construction permit constituted an intentional and continuous violation, which outweighed permittee's evidence concerning its ability to pay the proposed forfeitures).

¹⁸ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 11.35(a).

¹⁹ 47 C.F.R. § 1.80.

²⁰ 47 U.S.C. § 504(a).

²¹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

8. 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. 20554.²² 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.

9. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by both First Class Mail and Certified Mail, Return Receipt Requested, to Inter-city Christian Youth Program, Inc. at 2014 Fair Oaks Dr., Mission, Texas 78574-2000.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau

²² See 47 C.F.R. § 1.1914.