

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

In the Matter of)	
)	
Geneva Walker)	File No.: EB-FIELDSCR-12-00003047
)	File No.: EB-11-TP-0067
Licensee of Station WMAF-AM)	NAL/Acct. No.: 20123270 0005
Madison, Florida)	FRN: 0003774288
)	Facility ID No.: 5329

FORFEITURE ORDER

Adopted: May 2, 2013

Released: May 2, 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 three thousand dollars (\$3,000) to Geneva Walker, licensee of Station WMAF-AM (Station), for willfully and repeatedly violating Section 11.35(a) of the Commission's rules (Rules).¹ The noted violations involved Ms. Walker's failure to maintain operational Emergency Alert System (EAS) equipment and records indicating why EAS tests were not received.

II. BACKGROUND

2. On July 9, 2012, the Enforcement Bureau's Tampa Office (Tampa Office) issued a Notice of Apparent Liability for Forfeiture (*NAL*)² to Ms. Walker for failure to comply with EAS requirements. In response to the *NAL*, Ms. Walker admitted to the violation, but nonetheless urged cancellation or reduction of the proposed \$8,000 forfeiture, asserting that there is "no money to pay the forfeiture or to make installment payments" and that she has "had no problems with the FCC and [has] never had to provide any response to the FCC for any noncompliance."³ Ms. Walker also certified that Station WMAF-AM now has operational EAS equipment and is in full compliance with the EAS requirements.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 *Geneva Walker*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 7530 (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 Unsworn Declaration from Geneva Walker, at 2 (Aug. 3, 2012) (on file in EB-11-TP-0067) (*NAL Response*).

⁴ *Id.*

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

*Forfeiture Policy Statement.*⁷ In examining Ms. Walker'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 Ms. Walker's response in light of these statutory factors, and find that a reduction of the forfeiture is warranted based on inability to pay.

4. First, we affirm the *NAL*'s undisputed finding that Ms. Walker 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 As reflected in the *NAL*, on July 26, 2011, Station WMAF-AM had been without operational EAS equipment since December 2010. "Additionally, EAS Participants must determine the cause of any failure to receive the required tests or activations specified in § 11.61(a)(1) and (a)(2). Appropriate entries indicating reasons why any tests were not received must be made in the broadcast station log."¹¹ The Station had no record of any EAS tests ever having been received and no logs of EAS tests being sent after September 15, 2010. Based on the evidence before us, we conclude that Ms. Walker willfully and repeatedly violated Section 11.35(a) of the Rules by failing to maintain operational EAS equipment and failing to maintain complete EAS logs.

5. In response to the *NAL*, Ms. Walker nonetheless requests cancellation or reduction of the \$8,000 forfeiture based on her 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.¹² Based on the financial documents provided by Ms. Walker, we find sufficient basis to reduce the forfeiture to \$3,000.¹³ However, we caution Ms. Walker that a party's inability to pay is only one factor in our forfeiture calculation analysis, and is not dispositive.¹⁴ We have previously rejected inability to pay claims in cases of repeated or otherwise egregious violations.¹⁵ Therefore, future

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).

¹¹ *Id.*

¹² See *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).

¹³ This forfeiture amount falls within the percentage range that the Commission has previously found acceptable. See *supra* note 12. Ms. Walker also argues for a reduced forfeiture because of her history of compliance. Because we are already reducing the forfeiture based on the Licensee's inability to pay well beyond any reduction Ms. Walker would receive for the other argument, we need not address this other claim.

¹⁴ 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).

¹⁵ *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

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violations of this kind may result in significantly higher forfeitures that may not be reduced due to Ms. Walker'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, Geneva Walker **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand dollars (\$3,000) for violations of Section 11.35(a) of the Commission's rules.¹⁶

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.¹⁷ 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.¹⁸ Geneva Walker 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.¹⁹ 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.

8. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th

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intentional and continuous violation, which outweighed permittee's evidence concerning its ability to pay the proposed forfeitures).

¹⁶ 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).

¹⁷ 47 C.F.R. § 1.80.

¹⁸ 47 U.S.C. § 504(a).

¹⁹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁰ 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 Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to Geneva Walker, P.O. Box 776, Perry, FL 32348-0776, and to her attorney, Sherry D. Walker, 8133 Mahan Dr., Tallahassee, FL 32309.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director
South Central Region
Enforcement Bureau

²⁰ See 47 C.F.R. § 1.1914.