

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

|   |   |                               |
|---|---|-------------------------------|
| In the Matter of                                    | ) |                               |
|   | ) | Facility ID No. 69312         |
| <b>University of Richmond</b>                       | ) | NAL/Acct. No. MB-201241410037 |
|   | ) | FRN: 0008963720               |
| Licensee of Station WDCE(FM),<br>Richmond, Virginia | ) | File No. BRED-20110526AHB     |
|   | ) |                               |

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

**Adopted: September 4, 2012**

**Released: September 4, 2012**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. The Media Bureau (“Bureau”) has before it the application of the University of Richmond (“Licensee”) for renewal of its license (“Application”) for WDCE(FM), Richmond, Virginia (“Station”). The Bureau also has an Informal Objection (“Objection”) to the Application filed by Christopher Maxwell (“Maxwell”) on September 1, 2011.<sup>1</sup> In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (“NAL”),<sup>2</sup> we find that Licensee apparently willfully and repeatedly violated Section 73.1820 of the Rules by failing to maintain a complete Emergency Alert System (“EAS”) log.<sup>3</sup> Based upon our review of the record before us, we conclude that Licensee is apparently liable for monetary forfeiture in the amount of one thousand dollars (\$1,000).

**II. BACKGROUND**

2. In his Objection, Maxwell argues that the Station's renewal should be conditional because of Licensee's failure to maintain its EAS capability.<sup>4</sup> Maxwell claims that he has “never once” heard an EAS tone or automated announcement while listening to the Station, despite listening during tropical storms, hurricanes, and a recent earthquake.<sup>5</sup> Maxwell claims that he has heard EAS tones on another

<sup>1</sup> Maxwell submitted his original objection as a Petition to Deny on September 1, 2011. However, it was procedurally defective, as it did not contain an affidavit supporting his allegations. See 47 U.S.C. § 309(d). Maxwell subsequently filed an affidavit on September 8, 2011, after the deadline for filing petitions to deny the Application had passed. See 47 C.F.R. § 73.3516(e). Thus, we treat Maxwell's objection as an Informal Objection. See *The University of Washington*, Letter, 22 FCC Rcd 16737, 16739 (MB 2007) (“[A] retroactive declaration [or affidavit] is inadequate to cure the failure to provide such an affidavit or declaration with the Petition”). Licensee filed an Opposition to Petition to Deny (“Opposition”) on July 3, 2012, in response to a staff request.

<sup>2</sup> This NAL is issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended (“Act”), and Section 1.80 of the Commission's rules (“Rules”). See 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. § 1.80. The Bureau has delegated authority to issue the NAL under Section 0.283 of the Rules. See 47 C.F.R. § 0.283.

<sup>3</sup> See 47 C.F.R. § 73.1820(a)(1)(iii).

<sup>4</sup> Objection at 2.

<sup>5</sup> *Id.* at 3.

station, specifically WRVQ(FM), Richmond, “during the same period.”<sup>6</sup> Further, Maxwell alleges that Licensee has not maintained its EAS logs and that Licensee’s management is “unaware or uncaring of the regulations.”<sup>7</sup> Maxwell advocates for conditions to be placed upon Licensee’s renewal.<sup>8</sup>

3. In its Opposition, Licensee concedes that it only maintained sporadic records of its EAS alerts from July 1, 2010, to January 19, 2012, but presents a sampling of these records from November 9, 2011, to demonstrate that the system was functional during that time.<sup>9</sup> Moreover, Licensee claims that that it has since installed a Sage Digital ENDEC system to relay EAS announcements and maintain the logs automatically, in order to correct “past record keeping issues” and ensure full compliance with EAS requirements.<sup>10</sup>

### III. DISCUSSION

5. Informal objections must, pursuant to Section 309(e) of the Communications Act of 1934, as amended (the “Act”), provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with Section 309(k) of the Act,<sup>11</sup> which governs our evaluation of an application for license renewal. Specifically, Section 309(k)(1) provides that we are to grant the renewal application if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Commission’s Rules (the “Rules”); and (3) there have been no other violations which, taken together, constitute a pattern of abuse.<sup>12</sup> If, however, the licensee fails to meet that standard, the Commission may deny the application -- after notice and opportunity for a hearing under Section 309(e) of the Act -- or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”<sup>13</sup>

4. *Proposed Forfeiture.* Section 73.1820(a)(1)(iii) of the Rules requires licensees to maintain all EAS data in a specific EAS log, as part of the station log. The EAS log is to include entries for all tests and activations of the EAS, as well as explanations for any missing required test activations. As Licensee has acknowledged, during periods within the license term, the EAS log did not contain many

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<sup>6</sup> Objection, September 2, 2011, Affidavit of Christopher Maxwell.

<sup>7</sup> Objection at 4-5.

<sup>8</sup> *Id.* at 2-3. Maxwell requests that Licensee’s renewal be conditioned upon its “verifiable commitment” to abide by the Commission’s policies. He recommends that the Commission: (1) inspect the Station’s facilities with particular emphasis on its EAS capabilities; (2) make surprise inspections of the Station periodically for the next three years; (3) impose increasing fines for future infractions; and (4) initiate an investigation of the causes of the Station’s non-compliance.

<sup>9</sup> Opposition at 2 and Attachment E.

<sup>10</sup> *Id.* at 1-2. It also submits copies of electronic mail test alerts from the ENDEC system for May 22, 2012, and several tornado watch alerts from the ENDEC system it received on June 1, 2012. *Id.* at Attachments C and D.

<sup>11</sup> See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 note 10 (1990), *aff’d sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested).

<sup>12</sup> 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

<sup>13</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

of the entries required to be retained in the log by Section 73.1820(a)(1)(iii). In this regard, where lapses occur, “neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee’s rule violation.”<sup>14</sup>

7. Under Section 503(b)(1)(B) of the Act, a person who is found to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>15</sup> 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>16</sup> 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,<sup>17</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>18</sup> Section 312(f)(2) 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.”<sup>19</sup>

8. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$1,000 for “[f]ailure to maintain required records.”<sup>20</sup> In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including “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.”<sup>21</sup>

9. In this case, although Licensee admitted to violating Section 73.1820 and has acted to improve its record keeping in the future, it did so only after being alerted of its transgressions by Maxwell. Considering the record as a whole, we believe that a \$1,000 forfeiture is appropriate for the Section 73.1820 violations in this case.<sup>22</sup>

10. Maxwell also alleges that Licensee’s EAS equipment is not functional.<sup>23</sup> Section 11.35<sup>24</sup> of the Rules states that broadcast stations are responsible for ensuring that required EAS equipment is installed and maintained so that the monitoring and transmitting functions are available during the times

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<sup>14</sup> See, e.g., *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709 (MMB 1999) (citing *Gaffney Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, Notice of Apparent Liability, 33 FCC 706 (1962)); *Surrey Front Range Limited Partnership*, Notice of Apparent Liability, 7 FCC Rcd 6361 (FOB 1992).

<sup>15</sup> 47 U.S.C. § 503(b)(1)(B). See also 47 C.F.R. 1.80(a)(1).

<sup>16</sup> 47 U.S.C. § 312(f)(1).

<sup>17</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>18</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>19</sup> 47 U.S.C. § 312(f)(2).

<sup>20</sup> See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (“*Forfeiture Policy Statement*”), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

<sup>21</sup> 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4).

<sup>22</sup> See, e.g., *BanJo Communications Group, Inc.*, Forfeiture Order, 17 FCC Rcd 26101 (EB 2002) (imposing the base \$1,000 forfeiture to each of three stations for failure to maintain required EAS records).

<sup>23</sup> Objection at 2-3.

<sup>24</sup> 47 C.F.R. § 11.35.

the station is in operation. We find that Maxwell has not made a *prima facie* showing that Licensee violated Section 11.35 of the Rules. Although Maxwell claims that he has never heard an EAS tone or announcement while listening to the Station, he has provided no evidence that national, state, or local authorities issued an announcement triggering an activation of the EAS.<sup>25</sup> Additionally, he provides no dates or times during which he listened to the Station, nor does he provide specific incidents to support his allegations. The mere assertion that Maxwell heard an alert on another station but not on the Station at some unspecified time and date does not persuade us that a violation of Section 11.35 has occurred. We therefore reject this allegation.

11. *License Renewal Application.* We find that Licensee's apparent violation of Section 73.1820 of the Rules does not constitute a "serious violation" warranting designation for evidentiary hearing under Section 309(k) of the Act. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.<sup>26</sup> Further, we find that the Station served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than the apparent violation that would preclude grant of the application.

#### IV. ORDERING CLAUSES

13. Accordingly, in light of the discussion above, IT IS ORDERED, that the September 1, 2011, Informal Objection filed by Christopher Maxwell IS GRANTED to the extent indicated and IS DENIED in all other respects.

14. IT IS FURTHER ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,<sup>27</sup> that the University of Richmond is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of one thousand dollars (\$1,000) for its apparent willful and repeated violation of Section 73.1820 of the Commission's Rules.

15. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release of this *NAL*, the University of Richmond SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

16. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington DC 20554, ATTN: Peter H. Doyle, Chief, Audio Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. referenced above.

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<sup>25</sup> See 47 C.F.R. § 11.53; see also *Jacor Broadcasting of Colorado, Inc.*, Letter, 22 FCC Rcd 16869 (MB 2007) (rejecting petitioner's claim that the station's EAS was not functioning because petitioner had not demonstrated that the station had received a triggering message from state or local authorities).

<sup>26</sup> For example, we do not find here that Licensee's Station operation "was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." See *Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198 (1971). Nor do we find on the record here that "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the Station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Id.* at 200. See also *Center for Study and Application of Black Economic Development*, Hearing Designation Order, 6 FCC Rcd 4622 (1991), *Calvary Educational Broadcasting Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

<sup>27</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

17. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent 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 respondent’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.

18. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, DC 20554.<sup>28</sup>

19. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. 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.<sup>29</sup> Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at 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, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If 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).<sup>30</sup> Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov and Michael.Wagner@fcc.gov. Requests for payment of the full amount of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12<sup>th</sup> Street, S.W., Washington, DC 20554.<sup>31</sup>

20. IT IS FURTHER ORDERED, that a copy of this *NAL* shall be sent by First Class and Certified Mail - Return Receipt Requested, to Mr. Max Vest, University of Richmond, Tyler Commons, Richmond, VA 23173, and to its counsel, Shannon E. Sinclair, Esq., Maryland Hall, Suite 200, 28 Westhampton Way, University of Richmond, VA 23173, and to Mr. Christopher Maxwell, 1520 Porter Street, Richmond, VA 23224, and to his counsel, Don Schellhardt, Esq., 3250 East Main Street, # 48, Waterbury, CT 06705.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>28</sup> See 47 C.F.R. § 1.1914.

<sup>29</sup> 47 U.S.C. § 504(a).

<sup>30</sup> See 47 C.F.R. § 1.1914.

<sup>31</sup> *Id.*