

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

In the Matter of	)	
	)	
JCE Licenses, LLC	)	File No.: EB-FIELDSCR-13-00006553
	)	NAL/Acct. No.: 201432500004
Licensee of Station KBXD-AM,	)	FRN: 0010210433
Dallas, Texas	)	Facility ID No.: 57375
	)	

**FORFEITURE ORDER**

**Adopted: December 8, 2014**

**Released: December 8, 2014**

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

**I. INTRODUCTION**

1. We impose a penalty of \$7,200 against JCE Licenses, LLC (JCE), the licensee of AM Station KBXD in Dallas, Texas, for failing to maintain operational Emergency Alert System (EAS) equipment and logs. JCE admits that its EAS equipment was not operational and its station was without EAS logs, but nevertheless requests reductions of the proposed forfeiture because it has not previously received a written violation notice and has filed for bankruptcy. We have reviewed JCE's documentation and conclude a reduction of the proposed forfeiture to \$7,200 is warranted based on its history of compliance with the Commission's rules (Rules) but reject its inability to pay claim based on our precedent.

2. Specifically, in this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of seven thousand two hundred dollars (\$7,200) to JCE for willfully and repeatedly violating Section 11.35(a) of the Rules.<sup>1</sup>

**II. BACKGROUND**

3. On February 20, 2014, the Enforcement Bureau's Dallas Office (Dallas Office) issued a Notice of Apparent Liability for Forfeiture (NAL) to JCE for EAS violations.<sup>2</sup> As reflected in the NAL, on January 17, 2013, an agent from the Dallas Office observed that Station KBXD-AM had no installed EAS equipment or EAS logs, when the station was in operation. The station's general manager admitted that the station has been without operational EAS equipment since November 2012.

4. In response to the NAL, JCE acknowledges that Station KBXD-AM did not have installed EAS equipment, during the inspection, but states that it was operating pursuant to a construction permit at the time, and had not yet received its new Sage EAS unit, which was received shortly after the inspection.<sup>3</sup> The new unit, which had defective firmware and was returned for repairs, was installed and made operational on March 7, 2013.<sup>4</sup> JCE also notes that it did not begin normal operations of Station KBXD-

<sup>1</sup> 47 U.S.C. § 333; 47 C.F.R. § 95.413(a)(3).

<sup>2</sup> *JCE Licenses, LLC*, Notice of Apparent Liability for Forfeiture, 29 FCC Red 1664 (Enf. Bur. 2014) (NAL). A comprehensive recitation of the facts and history of this case can be found in the NAL and is incorporated herein by reference.

<sup>3</sup> Letter from James W. Hilliard, Vice President, JCE Licenses, LLC, to Dallas Office, South Central Region, Enforcement Bureau at 2-3 (Apr. 9, 2014) (NAL Response) (on file in EB-FIELDSCR-13-00006553).

<sup>4</sup> *Id.*

AM until March 27, 2013. Accordingly, because it was operating pursuant to a construction permit, it asserts that Section 11.35(a) of the Rules was not applicable on January 17, 2013. Alternatively, it requests reduction of the proposed forfeiture to \$4,000, because its violation was less egregious than other EAS cases, given its history of compliance with the rules and the fact that its EAS violations occurred prior to its resumption of full operations.<sup>5</sup>

5. Finally, JCE notes that its parent company is in Chapter 11 Bankruptcy proceedings and “payment of this forfeiture (assuming it was approved by the Bankruptcy Court) would impose a dire economic burden on JCE that it may not be able to recover from.”<sup>6</sup>

### III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>7</sup> Section 1.80 of the Rules,<sup>8</sup> and the *Forfeiture Policy Statement*.<sup>9</sup> In examining Cochise’s *NAL 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.<sup>10</sup> As discussed below, we have fully considered JCE’s response to the *NAL* in light of these statutory factors and find that a \$7,200 forfeiture is appropriate.

#### A. Failure to Maintain Operational EAS Equipment and Logs

7. Every broadcast station is part of the nationwide EAS network and is categorized as a participating national EAS source.<sup>11</sup> The EAS enables the President and state and local governments to provide immediate communications and information to the general public.<sup>12</sup> 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.<sup>13</sup> 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.

8. We affirm the *NAL*’s finding that JCE willfully and repeatedly violated Section 11.35(a) of the Rules.<sup>14</sup> Section 11.35(a) of the Rules states that EAS Participants are responsible for ensuring that

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<sup>5</sup> *Id.* at 4.

<sup>6</sup> *Id.* at 4-5.

<sup>7</sup> 47 U.S.C. § 503(b).

<sup>8</sup> 47 C.F.R. § 1.80.

<sup>9</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), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

<sup>10</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>11</sup> 47 C.F.R. §§ 11.11, 11.41.

<sup>12</sup> 47 C.F.R. §§ 11.1, 11.21.

<sup>13</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.

<sup>14</sup> 47 C.F.R. § 73.1125(a).

EAS Encoders, EAS Decoders, and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the stations and systems are in operation.<sup>15</sup> Section 11.35(a) also requires EAS participants to record in station logs the reasons why any EAS tests were not received.<sup>16</sup> It is undisputed that JCE did not have installed EAS equipment or logs during the inspection on January 17, 2013, and other days, when the station was broadcasting, albeit pursuant to a construction permit. Section 11.35(a) applies when a station is in “operation,” not full-time operation, so we disagree with JCE that the EAS rules were inapplicable. Therefore, based on the evidence before us, we conclude that JCE willfully<sup>17</sup> and repeatedly<sup>18</sup> violated Section 11.35(a) of the Rules by failing to maintain EAS equipment and logs.

## B. Forfeiture Amount

9. JCE requests cancellation of the proposed forfeiture based on its inability to pay, as evidenced by its parent company’s bankruptcy filing. A broadcaster’s “bankruptcy filing, alone, neither precludes the imposition of a forfeiture nor justifies an adjustment or cancellation of the forfeiture amount for a violation of the Rules.”<sup>19</sup> With regard to an individual’s or entity’s inability to pay claim, the Commission has determined that, in general, gross income or revenues are the best indicator of an ability to pay a forfeiture.<sup>20</sup> Accordingly, JCE was asked to provide its three most recent tax returns and submitted tax returns for JCE’s parent company. Based on the financial documents provided by JCE, we do not find sufficient basis to reduce the forfeiture, despite the bankruptcy filing.<sup>21</sup>

10. In response to the *NAL*, JCE also requested reduction of the proposed forfeiture based on its history of compliance with the Rules. We have reviewed our records and concur that JCE has not been previously cited with a violation of the Rules. Accordingly, we reduce the proposed forfeiture to seven thousand two hundred dollars (\$7,200) based on JCE’s history of compliance.<sup>22</sup> Accordingly, after

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<sup>15</sup> 47 C.F.R. § 11.35(a). *See also* 47 C.F.R. § 73.1820(a)(1)(iiii) (requiring licensees to create an entry for each test and activation of the EAS in the station log or in a special EAS log). If Station KBXD-AM had operational EAS equipment prior to November 2012, it failed to log any successful EAS tests.

<sup>16</sup> 47 C.F.R. § 11.35(a). *See also* 47 C.F.R. § 11.35(b) (requiring licensees to record when defective EAS equipment is removed from service).

<sup>17</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. 47 U.S.C. § 312(f)(1). 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, and the Commission has so interpreted the term in the Section 503(b) context.

<sup>18</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day. 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.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 9 (2001).

<sup>19</sup> *See North American Broadcasting Co., Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 2769, 2771 para. 6 (Enf. Bur. 2004); *Adelphi Communications*, Forfeiture Order, 18 FCC Rcd 7652, 7654 para. 8 (Enf. Bur. 2003).

<sup>20</sup> *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).

<sup>21</sup> This forfeiture amount falls within the percentage range that the Commission has previously found acceptable. *See supra* note 20. If JCE finds it financially infeasible to make full payment of this amount within 30 days, it can request an installment plan, as described in paragraph 13, *infra*, of this Forfeiture Order.

<sup>22</sup> *See Centro Colegial Cristiano, Inc.*, Forfeiture Order, 28 FCC Rcd 14734 (Enf. Bur. 2013) (proposed forfeiture reduced based on history of compliance with the Rules).

consideration of the entire record (including JCE's response to the *NAL*), the *Forfeiture Policy Statement*, and the factors set forth in Section 503(b)(2)(E) of the Act,<sup>23</sup> we find that, although cancellation of the monetary forfeiture is not warranted, a reduction of the forfeiture amount from \$9,000 to \$7,200 is appropriate in this case.

#### IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Rules, JCE Licenses, LLC **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of seven thousand two hundred dollars (\$7,200) for violations of Section 11.35(a) of the Rules.<sup>24</sup> For collection, the Commission will file a proof of claim at the appropriate time in JCE Licenses, LLC's bankruptcy action.

12. 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.<sup>25</sup> 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.<sup>26</sup> JCE Licenses, LLC shall send electronic notification of payment to [SCR-Response@fcc.gov](mailto: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.<sup>27</sup> 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 making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th

<sup>23</sup> 47 U.S.C. § 503(b)(2)(E). See 47 C.F.R. § 1.80(b)(5).

<sup>24</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 73.1125(a).

<sup>25</sup> 47 C.F.R. § 1.80.

<sup>26</sup> 47 U.S.C. § 504(a).

<sup>27</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>28</sup> 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](mailto:ARINQUIRIES@fcc.gov).

14. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to JCE Licenses, LLC at 2100 Park Central Blvd. N, Suite 100, Pompano Beach, Florida 33064.

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>28</sup> See 47 C.F.R. § 1.1914.