

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

In the Matter of)	
)	
Gla-Mar Broadcasting, LLC)	File Number: EB-06-SF-048
)	
Licensee of KBZB-FM)	NAL/Acct. No.: 200632960001
Pioche, NV)	FRN: 0009062464
Facility ID # 78999)	

FORFEITURE ORDER

Adopted: May 22, 2007

Released: May 24, 2007

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of two hundred and fifty dollars (\$250) to Gla-Mar Broadcasting, LLC, (“Gla-Mar”), licensee of station KBZB-FM, in Pioche, Nevada, for willfully and repeatedly violating Section 11.35(a) of the Commission’s Rules (“*Rules*”).¹ On September 29, 2006, the Enforcement Bureau’s San Francisco Office issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) in the amount of \$8,000 to Gla-Mar for failing to ensure the operational readiness of the KBZB-FM Emergency Alert System (“*EAS*”) equipment.² In this *Order*, we consider Gla-Mar’s arguments that it was in the process of ordering new *EAS* equipment prior to the inspection by the San Francisco Office, and that the forfeiture should be cancelled based on Gla-Mar’s inability to pay.

II. BACKGROUND

2. On June 13, 2006, agents from the Enforcement Bureau’s San Francisco Office inspected the KBZB-FM transmitter atop Highland Peak and the main studio of KBZB-FM located at 100 Main Street, Pioche, Nevada. At the time of the inspection, the San Francisco agents observed that the KBZB-FM *EAS* equipment was unable to transmit a test. Specifically, the agents asked the staff to transmit a required weekly test (“*RWT*”). The *RWT* was attempted and the *EAS* unit indicated the test was running. The station’s monitor speakers, however, did not carry the *EAS* audio, indicating that the test was not transmitted. Normal programming continued over-the-air when the *EAS* weekly test was purportedly in progress. The KBZB-FM staff indicated that they were aware that the *EAS* equipment was not fully functional. KBZB-FM staff members also indicated to the San Francisco agents that they reported this failure to the owner of the station, but no repairs were attempted.

3. The San Francisco agents asked to inspect KBZB-FM’s *EAS* log. The agents found no written log, consequently, there were no log entries giving a date of the failure of the *EAS* equipment³ or describing efforts to determine the cause of failure to receive required tests or to repair or replace the

¹ 47 C.F.R. § 11.35(a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200632960001 (Enf. Bur., Western Region, San Francisco Office, released September 29, 2006).

³ Additionally, KBZB-FM did not submit an informal request to the FCC San Francisco District Director, as required by Section 11.35(c) of the Rules, concerning the defective *EAS* equipment and when it would be repaired or replaced.

defective equipment. Additionally, the agents found no logs of RWT's, required monthly tests ("RMT's") or alerts.⁴ The agents were given seven printed EAS tapes. The tapes indicated KBZB-FM received RWT's on September 8, 2005, January 26, 2006, and April 20, 2006. The tapes also indicated KBZB-FM transmitted RWT's on May 17, 2005, September 11, 2005 and January 19, 2006. There were no tapes indicating the receipt or transmission of any RMT's.

4. On June 23, 2006, the KBZB-FM's engineer emailed the San Francisco Office and indicated that new EAS equipment had been installed, and that the staff had been trained on how to use it.

5. On September 29, 2006, the San Francisco Office issued a *NAL* in the amount of \$8,000 to Gla-Mar, finding that Gla-Mar apparently willfully and repeatedly failed to ensure the operational readiness of the KBZB-FM EAS equipment. Gla-Mar filed a response ("*Response*") on November 27, 2006, arguing that it was in the process of ordering new EAS equipment prior to the inspection by the San Francisco Office, and that the forfeiture should be cancelled based on Gla-Mar's inability to pay.⁵

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁶ Section 1.80 of the Rules,⁷ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("*Forfeiture Policy Statement*").⁸ In examining Gla-Mar's response, Section 503(b) 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.⁹

7. The Rules provide that every AM and FM broadcast station is part of the nationwide EAS network and is categorized as a participating national EAS source unless the station affirmatively requests authority to not participate.¹⁰ The EAS provides the President and state and local governments with the capability to provide immediate and emergency communications and information to the general public.¹¹ State and local area plans identify local primary sources responsible for coordinating carriage of common emergency messages from sources such as the National Weather Service or local emergency management officials.¹² Required monthly and weekly tests originate from EAS Local or State Primary sources and must be retransmitted by the participating station.

⁴ One staff member stated that EAS tests were done orally, but the agents found no oral tests entered into the station log.

⁵ Gla-Mar requested and received a 30 day extension to respond to the *NAL*.

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁹ 47 U.S.C. § 503(b)(2)(E).

¹⁰ 47 C.F.R. §§ 11.11 and 11.41.

¹¹ 47 C.F.R. §§ 11.1 and 11.21.

¹² 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.

8. Section 11.35 of the Rules requires all broadcast stations to ensure that EAS encoders, EAS decoders and Attention Signal generating and receiving equipment is installed and operational so that the monitoring and transmitting functions are available during the times the station is in operation. Broadcast stations must also determine the cause of any failure to receive required monthly and weekly EAS tests, and must indicate in the station's log why any required tests were not received and when defective equipment is removed and restored to service.¹³

9. Gla-Mar does not dispute the facts as described in the *NAL*, but does argue that it was in the process of ordering EAS equipment for KBZB-FM prior to the San Francisco agent's inspection on June 13, 2006. Gla-Mar did not order the EAS equipment, however, until June 15, 2006. Reductions based on good faith efforts to comply generally involve situations where violators demonstrate that they initiated measures to correct or remedy violations prior to a Commission inspection or investigation.¹⁴ Gla-Mar has produced no evidence to substantiate its claim that it was in the process of ordering EAS equipment prior to the inspection by the San Francisco agent, therefore, we are unable to reduce the proposed forfeiture amount based on Gla-Mar's good faith efforts to comply with the Rules.

10. Gla-Mar also requests that the forfeiture amount be cancelled based on its inability to pay. To support its request, Gla-Mar supplies three years of income tax data. In analyzing a financial hardship claim, the Commission generally has looked to gross revenues as a reasonable and appropriate yardstick in determining whether a licensee is able to pay the assessed forfeiture.¹⁵ The data produced by Gla-Mar does not support cancellation of the forfeiture, however, it does support a significant reduction of the forfeiture amount. Therefore, while we find that Gla-Mar willfully and repeatedly violated Section 11.35(a) of the Rules, based upon its inability to pay, we conclude that pursuant to Section 503(b) of the Act and the *Forfeiture Policy Statement*, reduction of the \$8,000 forfeiture to \$250 is warranted.

IV. ORDERING CLAUSES

11. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Gla-Mar Broadcasting, LLC, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$250 for willfully and repeatedly violating Section 11.35(a) of the Rules.¹⁶

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *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.¹⁷ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Act. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911- 6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C.

¹³ 47 C.F.R. § 11.35(a) and (b).

¹⁴ See *Radio One Licenses, Inc.*, 17 FCC Rcd 20408 (EB 2002), *recon. denied*, 18 FCC Rcd 15964 (2003).

¹⁵ See *PLB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992).

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

¹⁷ 47 U.S.C. § 504(a).

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13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Gla-Mar Broadcasting, LLC, at its address of record, and Aaron Shainis, Esquire, its counsel of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

¹⁸ See 47 C.F.R. § 1.1914.