

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

In the Matter of)	
)	
Barnstable Broadcasting, Inc.)	File No. EB-01-KC-678
dba Two Rivers Broadcasting Limited Partnership)	
FM Broadcast Station KGGO)	NAL/Acct. No. 20013256-003
FM Broadcast Station KJJY)	
Antenna Registration #1028734)	FRN 0003-7827-37
Newton, MA)	

FORFEITURE ORDER

Adopted: December 3, 2001

Released: December 5, 2001

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of \$16,000 to Barnstable Broadcasting, Inc., (“BBI”) dba Two Rivers Broadcasting Limited Partnership (“Two Rivers”), previous licensee of Stations KGGO(FM) and KJJY(FM), Des Moines and West Des Moines, Iowa respectively¹, for willful and repeated violation of Sections 11.35(a) and 17.51(b) of the Commission’s Rules (“Rules”).² The noted violations involved BBI’s failure to determine and log the reasons why EAS tests were not being received and its failure to maintain antenna lighting in operational condition. We also find that BBI failed to notify the Federal Aviation Administration (“FAA”) of lighting outages.

2. On August 3, 2001, the Commission’s Kansas City, Kansas Field Office (“Field Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to BBI for a forfeiture in the amount of sixteen thousand dollars (\$16,000).³ BBI filed a response to the NAL on August 30, 2001.⁴

¹ On March 19, 2001, BBI entered into a Time Brokerage Agreement with Wilks Broadcasting LLC (“Wilks”) pursuant to an Asset Purchase Agreement to assign the licenses of Stations KBGG(AM), KGGO(FM), KHKI(FM), KRKQ(FM), and KJJY(FM) to Wilks. The Commission approved the assignment applications on May 7, 2001.

² 47 C.F.R. §§ 11.35(a) and 17.51(b).

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 20013256-003 (Enf. Bur., Kansas City, Kansas Field Office, released August 3, 2001).

⁴ Although BBI’s filing is styled as a “Petition for Limited Reconsideration of Notice of Apparent Liability for Forfeiture,” we will treat its filing as a response to the NAL. See 47 C.F.R. § 1.80(f)(3).

II. BACKGROUND

3. On March 20, 2001 an agent from the Commission's Field Office inspected Station KRKQ(FM) and found that the licensee was not determining or logging the reasons why EAS tests were not being received. On March 28, 2001, the Field Office issued a *Notice of Violation* to BBI for violation of Section 11.35(a) of the Rules. On April 13, 2001, BBI submitted a response to the *Notice of Violation*, indicating that steps had been taken to correct the violation. On May 9, 2001, the FCC received a complaint of lighting outages on an antenna structure owned by BBI and used by Station KGGO(FM). On May 9, 2001, at approximately 3:15 p.m., the Field Office notified Mr. Kim Jones, manager of KGGO(FM), of the lighting outage. On May 10, 2001, a station employee notified the FAA of the lighting outage.

4. On May 23, 2001, BBI provided to the Field Office an incident report on the lighting outage. The report stated that the auto reporting unit began providing "intermittent, inconsistent indications" of the tower lighting a few months earlier, but no visual inspection was made until May 9, 2001. The licensee admitted that it failed to detect and expeditiously correct the lighting, failed to inform the FAA of the outage in a timely manner, and failed to make proper log notations. The licensee also stated that the lighting had been repaired on May 22, 2001.

5. On May 29, 2001, an agent from the Field Office inspected BBI's co-located stations, KGGO(FM) and KJJY(FM). During the inspection, the agent observed numerous violations of the Commission's rules including failure to determine and log the reasons why EAS tests were not being received and failure to maintain lighting in operational condition. On June 18, 2001, the Field Office issued a *Notice Of Violation* to BBI for the violations observed during the May 29, 2001 inspection. On July 13, 2001, BBI submitted a response to the *Notice Of Violation*. On August 3, 2001, the Field Office issued the captioned *NAL* for the violations.

6. On August 30, 2001, BBI filed its response to the *NAL*, requesting revision or correction of the *NAL*. BBI does not dispute our findings of the violations enumerated in the *NAL*, and does not challenge the amount of the forfeiture. BBI disputes, however, the factual characterizations included in the *NAL* and requests that they be corrected and the *NAL* revised. The *NAL* states that:

"Stations KGGO, KJJY and three co-owned and co-located stations in this group were operating under a time marketing agreement with Wilks Broadcasting LLC ("Wilks") per agreement dated March 19, 2001. **At the time of the inspection, Two Rivers maintained a manager responsible for accounts receivable and a receptionist. All station operations, other than accounts receivable, were under the direction and oversight of Wilks.**"⁵ (Emphasis in response to *NAL*).

BBI claims that the emphasized statements are inaccurate.⁶ BBI argues that the duties of its station manager went beyond responsibility solely for accounts receivable, and that its station manager "certainly transcended the de minimis meaningful managerial presence."⁷

⁵ *NAL*, Page 5. The page that is noted as "5" is actually the third page of the document.

⁶ BBI states that, during the Time Brokerage Agreement, BBI's station manager had the following duties:

7. BBI further states that the *NAL*'s characterization of the station manager's duties suggests that BBI "abdicated control of the station" and that Wilks "assumed unauthorized control of the station." According to BBI, either inference is contrary to the evidence submitted to the Commission and by the explanation of the station manager's duties. Consequently, the licensee requests that the Commission revise the *NAL* to delete the two erroneous sentences. Alternatively, the licensee requests that the Commission revise the *NAL* to reflect the station manager's complete duties and to reflect that all station operations, other than accounts receivable, were not under the direction or oversight of Wilks.

III. DISCUSSION

8. The forfeiture amount in this case was assessed in accordance with Section 503 of the Communications Act of 1934, as amended ("Act"),⁸ Section 1.80 of the Rules,⁹ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Policy Statement*"). In examining BBI'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.¹⁰

9. In light of the facts of this case and BBI's failure to refute our findings regarding the violations we conclude that BBI violated Sections 11.35(a) and 17.51(b) of the Commission's Rules. Accordingly, we assess a forfeiture in the amount of \$16,000. With respect to BBI's request regarding the *NAL*, we strike from the record in this proceeding the sentences in the *NAL* that, "At the time of the inspection, Two Rivers maintained a manager responsible for accounts receivable and a receptionist." and "All station operations, other than accounts receivable, were under the direction and oversight of Wilks."

monitored Wilks' programming to ensure compliance as required in Time Brokerage Agreement; maintained and filed all public file documents; coordinated all required broadcast and print local public notices following the filing of the applications to assign the stations' licenses to Wilks; worked with Wilks' employees, specifically the Chief Operator and engineer to address necessary action to ensure FCC compliance after the March 28, 2001 *Notice Of Violation* was issued; reviewed all station logs to confirm compliance with FCC rules after the May 29, 2001 FCC inspection; paid all fees and expenses relating to the operation and maintenance of the station; paid all salaries, taxes and insurance and all other costs related to the licensee's personnel; reviewed and paid all licensee invoices and collected reimbursable amounts from the Time Broker; addressed employee concerns regarding vacations, severance, and benefits, etc. arising from the Time Brokerage Agreement transition period; supervised the collection and recording of accounts receivable monies during the term of the Time Brokerage Agreement; researched and provided a list of all contracts which were open at the time of the Time Brokerage Agreement; reported regularly to BBI regarding employee issues, programming matters etc.; and distributed the Emergency Alert System Handbook to be posed at all operators' stations.

⁷ *Jones Eastern of the Outerbanks, Inc.*, 7 FCC Rcd 6800 (1992).

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. § 1.80.

¹⁰ 47 U.S.C. § 503(b)(2)(D).

IV. ORDERING CLAUSES

10. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503 of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹¹ Barnstable Broadcasting, Inc., dba Two Rivers Broadcasting Limited Partnership **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of sixteen thousand dollars (\$16,000) for failure to determine and log the reasons why EAS tests were not being received and failure to maintain lighting in operational condition in willful and repeated violation of Sections 11.35(a) and 17.51(b) of the Rules.

11. **IT IS FURTHER ORDERED** that, the underlying *Notice of Apparent Liability for Forfeiture* issued in this proceeding will be revised as indicated above, and unchanged in all other respects.

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.¹² Payment shall be made by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 20013256-003, and the FRN 0003-7827-37. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹³

13. **IT IS FURTHER ORDERED** that, a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to Barnstable Broadcasting, Inc. dba Two Rivers Broadcasting Limited Partnership, 2 Newton Executive Park, Newton, MA, 02162, and to Allan G. Moskowitz, Esq., Kaye Scholer LLP, The McPherson Building, 901 Fifteenth Street, NW, Washington, D.C. 20005.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹¹ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹² 47 U.S.C. § 504(a).

¹³ See 47 C.F.R. § 1.1914.