

Federal Communications Commission

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

In the Matter of)
Bethune-Cookman College, Inc.) File Number EB-08-TP-0406
Licensee of station WRWS-LP) NAL/Acct. No. 200932700004
Daytona Beach, FL 32114-3099) FRN: 000-95028-65
Facility ID Number: 134386)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: January 21, 2009

By the District Director, Tampa Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Bethune-Cookman College, Inc. (“Bethune-Cookman”), licensee of station WRWS-LP, in Daytona Beach, Florida, apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (“Act”),¹ and Section 11.35(a) of the Commission’s Rules (“Rules”)² by operating an unlicensed radio transmitter and failing to install the required Emergency Alert System (“EAS”) equipment. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),³ that Bethune-Cookman is apparently liable for a forfeiture in the amount of eighteen thousand dollars (\$18,000).

II. BACKGROUND

2. On October 31, 2008, agents from the Commission’s Tampa Office of the Enforcement Bureau (“Tampa Office”), accompanied by the station’s general manager and chief engineer, conducted an inspection of low power FM radio station WRWS-LP’s main studio in Daytona Beach, Florida during normal business hours. The agents observed that the station was using a broadcast studio to transmitter link (“STL”) transmitter.⁴ The station’s chief engineer stated that the station was operating an STL on 950.000 MHz with 2.8 watts of output power. Neither the chief engineer nor the general manager could produce a license for the STL operation or any evidence that the station had ever had an STL license. The agents also observed that the station did not have an installed EAS decoder. The general manager stated that he was unaware that non-commercial low power FM stations were required to have EAS equipment. The chief engineer stated that he tried before, without success, to convince the station management that an

¹ 47 U.S.C. § 301.

² 47 C.F.R. § 11.35 (a).

³ 47 U.S.C. § 503(b).

⁴ The transmitter in use was an Armstrong XLINK STL transmitter, a device designed to be used pursuant to Part 73 of the Rules.

EAS decoder was needed.

3. After the inspection of the main studio, the agents from the Tampa Office inspected the station's transmitter site, also in Daytona Beach, Florida. The agents observed an STL receiver in operation at the transmitter site. Using direction finding techniques, the agents confirmed the station was operating an STL from the main studio to the transmitter site on 950.000 MHz. There were no other means by which to transmit the station's programming from the main studio to the transmitter site, besides the STL equipment.

III. DISCUSSION

4. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.⁵ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁶

5. Section 301 of the Act requires that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license.⁷ The Act specifically defines within the United States as transmissions or communications from one place within a Territory: to another place in the same Territory; to another State, Territory or possession of the United States; or to any place in a foreign country or to any vessel. Section 74.6 of the Rules⁸ states applicants for and licensees of low power auxiliary stations authorized under subparts D, E, F, and H of this part are subject to the application and procedural rules for wireless telecommunications services contained in part 1, subpart F of this chapter. Section 1.903 of the Rules, located in part 1, subpart F, requires stations in the Wireless Radio Services to be used and operated with a valid authorization granted by the Commission. During the inspection on October 31, 2008, agents from the Tampa Office observed that station WRWS-LP was operating an aural broadcast STL on the frequency of 950.00 MHz. The station's general manager and chief engineer admitted that the station was using 950.00 MHz to transmit the station's programming from the main studio to the transmitter site. When the agents requested to see the license for the STL link, the general manager and chief engineer admitted that they did not have an authorization for the operation. Later on this date, using direction finding techniques, the agents confirmed that WRWS-LP was operating the broadcast STL on 950.00 MHz from the main studio to the transmitter site. The station operates all year, Monday to Friday from 3:00 am until 3:00 pm. In addition, between July 1 and December 31, the station operates from 3:00 am Saturday until 3:00 am Sunday. At the time of the inspection, there was no other means by which to transmit programming from the main studio to the transmitter site.⁹

⁵ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁶ 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."

⁷ 47 U.S.C. § 301.

⁸ 47 C.F.R. § 74.6.

⁹ Because the station began broadcasting on February 12, 2008, the STL transmitter was in use more than 720 hours annually. See 47 C.F.R. § 74.24(d).

6. Section 11.35(a) of the Rules requires Broadcast stations to be responsible for ensuring that ... EAS Decoders ... used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the stations are in operation.¹⁰ Section 11.11(a) of the Rules states that as of January 1, 1997, low power FM stations are required to have an EAS decoder.¹¹ During an inspection on October 31, 2008 when the station was in operation, station WRWS-LP did not have an installed EAS decoder. The station's general manager was not aware at the time of the inspection that the station was required to have an installed EAS decoder.¹² There was no evidence that the station had ever installed an EAS decoder at the station, and the station's license was granted February 12, 2008.

7. Based on the evidence before us, we find that Bethune-Cookman apparently willfully and repeatedly violated Section 301 of the Act and Section 11.35(a) of the Rules by operating a radio transmitter without a license and by failing to install the required EAS decoder.

8. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("*Forfeiture Policy Statement*"), and Section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000.¹³ The base forfeiture amount for not installing the required EAS equipment is \$8,000.¹⁴ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.¹⁵ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Bethune-Cookman is apparently liable for a \$18,000 forfeiture.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Bethune-Cookman College, Inc., is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of eighteen thousand dollars (\$18,000) for violations of Section 301 of the Communications Act of 1934, as amended and Section 11.35(a) of the Commission's Rules.¹⁶

10. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Bethune-Cookman College, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

¹⁰ 47 C.F.R. § 11.35(a).

¹¹ 47 C.F.R. § 11.11(a).

¹² We do not need to address whether this apparent violation was willful, because we find that the apparent violation was repeated. However, "prior knowledge or understanding of the law is unnecessary to a determination of whether a violation existed [and] ... [t]he Commission also does not consider ignorance of the law a mitigating factor." *Profit Enterprises, Inc.*, 8 FCC Rcd 2846, 2846 (1993), *cancelled on other grounds*, 12 FCC Rcd 14999 (1997); *see also Southern California Broadcasting Company*, 6 FCC Rcd 4387 (1991). Moreover, the station's chief engineer stated that he previously tried to convince the station that a decoder was required.

¹³ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

¹⁴ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

¹⁵ 47 U.S.C. § 503(b)(2)(E).

¹⁶ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 47 U.S.C. § 301, §11.35(a)

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11. 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/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, 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, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When 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). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Bethune-Cookman also will send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

12. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Tampa Office, 2203 N. Lois Avenue, Suite 1215, Tampa, Florida, 33607 and must include the NAL/Acct. No. referenced in the caption.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner 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 petitioner'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.

14. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Bethune-Cookman College, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow
District Director
Tampa Office
South Central Region
Enforcement Bureau