

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

In the Matter of)
)
Walter M. Czura) File No.: EB-11-AT-0083
) NAL/Acct. No.: 201232480002
Licensee of Station WNFO) FRN No: 0009352337
Sun City Hilton Head, SC) Facility ID # 70793
Facility ID # 70793)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: March 8, 2012

Released: March 8, 2012

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

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Walter M. Czura, licensee of Station WNFO, Sun City Hilton Head, South Carolina, apparently willfully and repeatedly violated Sections 73.49, 11.35, and 73.3526 of the Commission's rules (Rules)1 by failing to: (1) maintain an effective locked fence around the base of an antenna tower; (2) install operational Emergency Alert System (EAS) equipment; and (3) maintain and make available a complete public inspection file. We conclude that Mr. Czura is apparently liable for a forfeiture in the amount of twenty five thousand dollars (\$25,000). In addition, we direct Mr. Czura to submit, no later than thirty (30) calendar days from the date of this NAL, a statement signed under penalty of perjury that Station WNFO's base fence has been repaired, its EAS equipment is operational, and its public inspection file is complete.

II. BACKGROUND

2. On July 27, 2011, in response to a complaint, agents from the Enforcement Bureau's Atlanta Office (Atlanta Office) inspected the antenna tower at the transmitter site of Station WNFO(AM), while the station was in operation. The agents observed that a portion of the fence surrounding the base of the antenna tower was collapsed, allowing ready access to the base of the tower. Based on the condition of the fence, the agents concluded that the fence had been in disrepair for more than one day.2 The agents also observed that there was no perimeter fence around the property.

3. That same day, the agents from the Atlanta Office continued the inspection at Station WNFO's main studio.3 The only people present at the main studio were representatives of another entity, who operated Station WNFO(AM) pursuant to a local marketing agreement (LMA).4 The agents observed

1 47 C.F.R. §§ 73.49, 11.35(a), 73.3526.

2 Many of the boards comprising the downed fence section were broken and separated and were covered with weeds, leaves, and debris, indicating that the fence had been collapsed for a long time.

3 The main studio was located about 8 miles from the transmitter site.

4 The agents contacted Mr. Czura via telephone and asked to meet with him, but he was unavailable to meet with the agents in person and did not send an alternate representative. Mr. Czura told the agents that the LMA operator was (continued...)

that there were no EAS equipment or any EAS logs located at the main studio. The LMA operator, identified by Mr. Czura as being most familiar with the station's operations, was unfamiliar with EAS requirements and said that she had never observed EAS activity⁵ during her five years at the station. During regular business hours on July 27, 2011, the agents from the Atlanta Office requested to inspect Station WNFO's public inspection file. The public inspection file produced was incomplete and was missing all issues/programs lists, ownership reports, the most recent Public and Broadcasting, and a copy of the LMA. The LMA operator was unfamiliar with the public inspection file and said that she had never filed anything in the file and that, to her knowledge, the licensee had never been to the main studio to place anything in the file. At the conclusion of the main studio inspection, the agents from the Atlanta Office contacted Mr. Czura via telephone.⁶ Mr. Czura was also unfamiliar with the public inspection file and suggested that the LMA operator would have the required documents or that the documents might be located in the transmitter building at the transmitter site.⁷ Mr. Czura said that the EAS equipment was located in the transmitter building, but he was unable to provide any further details regarding EAS logs or EAS operations. Mr. Czura claimed to be unaware that a section of the fence surrounding the base of the AM antenna tower had collapsed, but said he would get the fence repaired.

4. The agents from the Atlanta Office then returned to Station WNFO's transmitter site and inspected the transmitter building's facilities.⁸ The agents found an EAS encoder/decoder (ENDEC) in the transmitter building plugged into a power source, but the ENDEC was not connected to any receivers or to the transmitter. There were no current EAS logs⁹ at the transmitter site and the ENDEC internal memory showed no EAS activity. The agents also searched for the public inspection file documents but were unable to find anything.

5. On July 28, 2011, the agents from the Atlanta Office, accompanied by an engineer often hired by the LMA operator to perform work on the station, returned for a final inspection of the transmitter site. The engineer confirmed that the EAS ENDEC was not connected to the transmitter or to a receiver. The engineer demonstrated that the EAS ENDEC was operational and could send a test, but, because it was not connected to anything other than a power supply, the test was not broadcast over the air.

6. On September 9, 2011, the Atlanta Office issued a Letter of Inquiry to Mr. Czura regarding Station WNFO.¹⁰ Mr. Czura responded to the LOI on September 30, 2011.¹¹ Mr. Czura again stated that "some portion" of the station's public inspection file may have been at the transmitter site during the July 27, 2011 inspection, but provided no specifics or evidence to support this claim. He also asserted that the

(...continued from previous page)

the most familiar person with station operations, so the agents continued the inspection of the main studio with the LMA operator.

⁵ The LMA operator never heard any EAS alerts or tests transmitted or received and re-transmitted by Station WNFO.

⁶ The agents made a second request for Mr. Czura to accompany them during the inspection, but he declined.

⁷ The transmitter building was a padlocked and unattended shed.

⁸ Mr. Czura provided the agents access to the key to the lock on the transmitter building and gave them permission to inspect the building.

⁹ There was an old EAS log covering 2003 and 2004 in the transmitter building.

¹⁰ Letter from Douglas G. Miller, District Director, Atlanta Office to Walter M. Czura, dated September 9, 2011 (*LOI*).

¹¹ Letter from Robert V. Mathison, Jr., Counsel for Walter M. Czura, to Douglas G. Miller, District Director, Atlanta Office, dated September 30, 2011 (*LOI Response*).

LMA operator was responsible for the public inspection file.¹² Mr. Czura stated that he observed the fence surrounding the antenna tower on July 20, 2011 and “found nothing amiss.”¹³ Finally, Mr. Czura stated that “[a]n act of vandalism occurred at the tower site after Mr. Czura’s visit on July 20, 2011. The exact date is uncertain, but the EAS equipment in the transmitter building is believed to have become disconnected at that time. Mr. Czura normally tests the EAS system himself. A number of items were discovered to be missing after the vandalism, and unfiled tapes for the EAS logs appear to be among them. The EAS equipment is currently under repair and will be operational by the end of next week.”¹⁴

III. DISCUSSION

7. Section 503(b) of the Communications Act of 1934, as amended (Act),¹⁵ 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. 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.¹⁶ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Section 312 and 503(b) of the Act¹⁷ and the Commission has so interpreted the term in the Section 503(b) context.¹⁸ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹⁹ The term “repeated” means the commission or omission of such act more than once or for more than one day.²⁰

A. Failure to Maintain Antenna Tower Fencing

8. Section 73.49 of the Rules states that “[a]ntenna towers having radio frequency potential at the base... must be enclosed within effective locked fences or other enclosures.”²¹ On July 27, 2011, when the station was on the air and when the tower had radio frequency potential at the base, agents from the Atlanta Office observed that a large section of the fence surrounding the base of the WNFO(AM) antenna tower had collapsed, allowing access to the base of the tower. Based on its condition, the agents

¹² LOI Response at 1-2.

¹³ LOI Response at 2.

¹⁴ LOI Response at 3.

¹⁵ 47 U.S.C. § 503(b).

¹⁶ 47 U.S.C. § 312(f)(1).

¹⁷ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in Section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission’s application of those terms”).

¹⁸ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) (*Southern California Broadcasting Co.*).

¹⁹ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

²⁰ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388 para 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362 para 9.

²¹ 47 C.F.R. § 73.49.

determined that the fence had been collapsed for more than one day. Mr. Czura does not dispute that the fence collapsed, but claims that the fence was intact on July 20, 2011. Given the condition of the fence, however, we do not find Mr. Czura's assertion that the fence was intact on July 20, 2011 plausible. In any event, regardless of whether the fence was intact on July 20, 2011, it is clear that the fence allowed access to the base of the tower and was ineffective on more than one day.²² Accordingly, based on the evidence before us, we find that Mr. Czura apparently willfully and repeatedly violated Section 73.49 of the Rules by failing to maintain an effective locked fence around an AM antenna tower.

B. Failure to Maintain Operational Readiness of Emergency Alert System Equipment

9. Every 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 refrain from participation, and that request is approved by the Commission.²³ The EAS enables the President and the state and local governments to provide immediate and emergency communications and information to the general public.²⁴ 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.²⁵ 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 Emergency Alert System is critical to the 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.

10. Section 11.35(a) of the Rules requires all broadcast stations to ensure that EAS encoders, EAS decoders, and attention signal generating and receiving equipment are installed and operational so that the monitoring and transmitting functions are available during the times the station is in operation.²⁶ On July 27, 2011, agents from the Atlanta Office observed that the station's EAS equipment located at the transmitter site was not connected to the transmitter or to any receivers. Accordingly, the equipment was unable to receive or send EAS tests over the air. The LMA operator for the station, who was the only regular person staffing the station, acknowledged that she had never witnessed any EAS activity at the station during her five years at the station. Mr. Czura asserts vandals disconnected the EAS equipment sometime after July 20, 2011 and removed the station's EAS logs. However, when the agents arrived at the transmitter site on July 27, 2011, they found the outside door of the transmitter building locked with a padlock. It is difficult to believe that vandals would have disconnected, but otherwise left untouched, valuable EAS equipment at the transmitter site, removed the station's EAS logs, and then secured the transmitter site afterwards. Moreover, if the EAS equipment was operational on July 20, 2011 and an EAS test was transmitted, there should have been some record of the test in the equipment's internal memory. Because Station WNFO did not maintain any EAS logs and could not produce entries in the internal memory of the EAS unit to demonstrate properly functioning EAS equipment during the past 60

²² We note that Mr. Czura states he had the fence repaired soon after agents from the Atlanta Office contacted him, but corrective action taken after an inspection is expected and does not warrant mitigation of a forfeiture. *See International Broadcasting Corporation*, Order on Review, 25 FCC Rcd 1538 (2010); *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

²³ 47 C.F.R. §§ 11.11, 11.19, 11.41.

²⁴ 47 C.F.R. §§ 11.1, 11.21.

²⁵ 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.

²⁶ 47 C.F.R. § 11.35(a).

days, we do not find Mr. Czura's assertion that the station's EAS equipment had been operational prior to July 20, 2011 reliable. Accordingly, based on the evidence before us, we find that Mr. Czura apparently willfully and repeatedly violated Section 11.35 of the Rules by failing to install EAS equipment such that its monitoring and transmitting functions were operational.

C. Failure to Maintain and Make Available the Public Inspection File

11. Section 73.3526 of the Rules states that "[e]very permittee or licensee of an AM, FM, TV or a Class A station in the commercial broadcast services shall maintain a public inspection file containing the material" set forth in that section.²⁷ Section 73.3526(e)(12) of the Rules states that commercial AM and FM broadcast stations must retain in the file "every three months a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period. [. . .] The lists described in this paragraph shall be retained in the public inspection file until final action has been taken on the station's next license renewal application."²⁸ Sections 73.3526(e)(5) and (e)(8) of the Rules states that a the most recent, complete ownership report and the most recent version of the manual entitled "The Public and Broadcasting" shall be placed in the public inspection file.²⁹ Section 73.3526(e)(14) of the Rules states that "a copy of every agreement or contract involving time brokerage of the licensee's station . . . shall be retained as long as the contract or agreement is in force."³⁰ The public inspection file must be maintained at the main studio of the station,³¹ and must be available for public inspection at any time during regular business hours.³²

12. On July 27, 2011, in response to request made during regular business hours, the LMA operator for Station WNFO, the person Mr. Czura stated was responsible for the public inspection file, was unable to produce a complete public inspection file. The LMA operator stated she was unfamiliar with the public inspection file and had never placed anything in the file. The file produced was missing all issues/programs lists, ownership reports, a copy of the LMA contract, and the current version of the Public and Broadcasting. Mr. Czura asserts that the missing items may have been located at the transmitter site, but the agents were unable to find the missing items at the transmitter site on July 27, 2011, and Mr. Czura has not produced any evidence to support his claim.³³ Based on the evidence before us, we find that Mr. Czura apparently willfully and repeatedly violated Section 73.3526 of the Rules by failing to maintain a complete public inspection file and apparently willfully violated Section 73.3526 of the Rules by failing to make available a complete public inspection file.

D. Proposed Forfeiture and Reporting Requirement

13. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for AM tower fencing violations is \$7,000; for EAS equipment not installed or operational is \$8,000; and for violation of the public file rules is \$10,000.³⁴ In assessing the monetary

²⁷ 47 C.F.R. § 73.3526(a)(2).

²⁸ 47 C.F.R. § 73.3526(e)(12).

²⁹ 47 C.F.R. §§ 73.3526(e)(5), (e)(8).

³⁰ 47 C.F.R. § 73.3526(e)(14).

³¹ 47 C.F.R. § 73.3526(b).

³² 47 C.F.R. § 73.3526(c).

³³ Even if the missing contents were located in the transmitter site, it is undisputed that on July 27, 2011, Mr. Czura failed to make available a complete public inspection file.

³⁴ *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) (*Forfeiture Policy Statement*), recon. denied,

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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, any history of prior offenses, ability to pay, and other such matters as justice may require.³⁵ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Czura is apparently liable for a total forfeiture of \$25,000, consisting of the following: \$7,000 for failure to maintain an effective locked fence, \$8,000 for failure to install EAS equipment, and \$10,000 for failure to maintain and make available a complete public inspection file.

14. We direct Mr. Czura to submit a written statement, pursuant to Section 1.16 of the Rules,³⁶ signed under penalty of perjury that the licensee has: (1) repaired the locked fence around the base of the antenna tower; (2) placed all of the required contents in Station WNFO's public inspection file; and (3) properly installed Station WNFO's EAS equipment. This statement must be provided to the Atlanta Office at the address listed in paragraph 19 within thirty (30) calendar days of the release date of this NAL.

IV. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314 and 1.80 of the Commission's rules, Walter M. Czura is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty five thousand dollars (\$25,000) for violations of Sections 11.35(a), 73.49, and 73.3526 of the Rules.³⁷

16. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Walter M. Czura **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

17. **IT IS FURTHER ORDERED** that Walter M. Czura **SHALL SUBMIT** a statement as described in paragraph 14 to the Atlanta Office within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

18. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN 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,

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15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

³⁵ 47 U.S.C. § 503(b)(2)(E).

³⁶ 47 C.F.R. § 1.16.

³⁷ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 11.35, 73.49, 73.3526.

Washington, D.C. 20554.⁸ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. Walter Czura will send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

19. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80(f)(3) and 1.16 of the Rules.³⁸ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Atlanta Office, 3575 Koger Blvd., Suite 320, Duluth, GA 30096 and include the NAL/Acct. No. referenced in the caption. Walter M. Czura also shall email the written response to, SCR-Response@fcc.gov.

20. 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.

21. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to Walter M. Czura at P.O. Box 6567, Hilton Head Island, SC 29938.

FEDERAL COMMUNICATIONS COMMISSION

Douglas G. Miller
District Director,
Atlanta Office
South Central Region
Enforcement Bureau

⁸ See 47 C.F.R. § 1.1914.

³⁸ 47 C.F.R. §§ 1.16, 1.80(f)(3).