

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

In the Matter of)	
)	
WOYK Inc.)	File No.: EB-10-PA-0308
Licensee of Radio Station WOYK(AM))	NAL/Acct. No.: 201232400004
Owner of Antenna Structure Number 1029251)	FRN: 0005-02-3106
York, Pennsylvania)	Facility ID #: 73873
)	
)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 22, 2012

Released: May 22, 2012

By the Acting District Director, Philadelphia Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that WOYK Inc. (WOYK), licensee of AM Station WOYK in York, Pennsylvania (Station), and owner of antenna structure number 1029251 (Antenna Structure), apparently willfully and repeatedly violated Section 73.49 of the Commission’s rules (Rules)¹ by failing to enclose the Antenna Structure within an effective fence or enclosure. We conclude that WOYK is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000).

II. BACKGROUND

2. On December 17, 2010, agents from the Enforcement Bureau’s Philadelphia Office (Philadelphia Office) conducted an inspection of the Station’s transmitter site in York, Pennsylvania and the Antenna Structure. The agents observed that the hasp on the gate of the fence enclosing the Antenna Structure was broken, which prevented the gate from closing and allowed unrestricted access to the base of the Antenna Structure. Based on the condition of the hasp, it appeared to the agents that the hasp had been in disrepair for an extended period of time. In addition, the property on which the Antenna Structure is located was not enclosed by a protective property fence and there is a nearby residential area.

3. During a telephone conversation on December 17, 2010, the Station’s President informed the agent that he would immediately schedule an inspection of the Antenna Structure. The Station’s President contacted the agent that same day and reported that he fixed the hasp and secured the gate around the Antenna Structure.

¹ 47 C.F.R. § 73.49.

III. DISCUSSION

4. Section 503(b) of the Communications Act of 1934, as amended (Act),² 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.³ 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,⁴ and the Commission has so interpreted the term in the Section 503(b) context.⁵ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁶ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁷

A. Failure to Enclose the Antenna Structure Within an Effective Locked Fence

5. Section 73.49 of the Rules requires that antenna towers having radio frequency (RF) potential at the base (series fed, folded unipole, and insulated base antennas) must be enclosed within effective locked fences or other enclosures.⁸ The Antenna Structure has RF potential at its base.⁹ On December 17, 2010, agents observed an unlocked gate to the fence surrounding the Antenna Structure which allowed unrestricted access to the base of the Antenna Structure. The agents observed that the gate could not be secured because of a broken hasp and that the extent of the damage to the hasp clearly indicated that the gate had been unlocked for an extended period of time. The agents also observed that there was no perimeter fence surrounding the property. Based on the evidence before us, we find that WOYK apparently willfully and repeatedly violated Section 73.49 of the Rules by failing to enclose the Antenna Structure within an effective locked fence.

² 47 U.S.C. § 503(b).

³ 47 U.S.C. § 312(f)(1).

⁴ 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 [A]ct (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”).

⁵ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

⁶ 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).

⁷ 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.*, 16 FCC Rcd at 1362.

⁸ 47 C.F.R. § 73.49.

⁹ See File No. BR-20060306BCI.

B. Proposed Forfeiture

6. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for an AM fencing violation is \$7,000.¹⁰ 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, any history of prior offenses, ability to pay, and other such matters as justice may require.¹¹ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that WOYK is apparently liable for a forfeiture in the amount of \$7,000.

IV. ORDERING CLAUSES

7. 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, WOYK Inc., is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seven thousand dollars (\$7,000) for violation of Section 73.49 of the Rules.¹²

8. **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, WOYK Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. 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, Washington, D.C. 20554.¹³ 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. WOYK Inc. will send electronic notification on the date said payment is made to NER-Response@fcc.gov.

10. 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.¹⁴ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Northeast Region, Philadelphia Office, One Oxford Valley Building,

¹⁰ *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*), recons. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹¹ 47 U.S.C. § 503(b)(2)(E).

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

¹³ See 47 C.F.R. § 1.1914.

¹⁴ 47 C.F.R. §§ 1.16, 1.80(f)(3).

Suite 404, 2300 East Lincoln Highway, Langhorne, Pennsylvania 19047 and include the NAL/Acct. No. referenced in the caption. WOYK Inc. also shall email the written response to NER-Response@fcc.gov.

11. 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.

12. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to WOYK Inc. at 1360 Copenhaffer Road, York, Pennsylvania, 17404.

FEDERAL COMMUNICATIONS COMMISSION

Kevin Doyle
Acting District Director
Philadelphia Office
Northeast Region
Enforcement Bureau