

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

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| In the Matter of |) | |
| |) | |
| The Catholic, Apostolic & Roman Catholic Church |) | File No.: EB-FIELDSCR-13-00007724 |
| in Puerto Rico |) | NAL/Acct. No.: 201432680001 |
| |) | FRN: 0005815618 |
| Licensee of Station WKVM-AM |) | Facility ID No.: 8096 |
| San Juan, PR |) | |
| |) | |
| Owner of Antenna Structure Nos.: 1011472, |) | |
| 1011473, 1011474 |) | |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 17, 2014

Released: January 17, 2014

By the Resident Agent, San Juan Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that The Catholic, Apostolic & Roman Catholic Church in Puerto Rico (Church), licensee of AM Station WKVM (Station) located in San Juan Puerto Rico, apparently willfully and repeatedly violated Section 73.49 of the Commission's rules (Rules),¹ by failing to have an effective locked fence or other enclosure around its antenna structures. We conclude that the Church is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000).

II. BACKGROUND

2. On April 3 and 8, 2013, an agent from the Enforcement Bureau's San Juan Office (San Juan Office) inspected the Station's three antenna structures,² while the Station was in operation and observed that the individual fences surrounding each structure were missing several pickets, which allowed access to each of the structures. In addition, the individual fence surrounding one of the structures had a portion of the fence on the ground and an open gate. Finally, the agent observed that the perimeter fence surrounding the property was not locked or intact, as one section lay on the ground.

3. On April 16, 2013, the San Juan Office issued a Notice of Violation (*NOV*) to the Church regarding the Station's antenna structure fences.³ In response, the Church stated that prior to September/October 2012, the individual fences around the three antenna structures were intact and that the fences were damaged in the fall of 2012 by heavy storms.⁴ Moreover, the Church stated that the perimeter

¹ 47 C.F.R. § 73.49.

² The Church owns antenna structure numbers 1011472, 1011473, and 1011474.

³ *The Catholic, Apostolic & Roman Catholic Church in Puerto Rico*, Notice of Violation, V326820130003 (Apr. 16, 2013) (on file in EB-FIELDSCR-13-00007724) (*NOV*).

⁴ Letter from Francisco R. Montero, counsel for The Catholic, Apostolic & Roman Church in Puerto Rico, to the
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property fence gate was damaged, by an unknown party, in the January/February 2013 timeframe.⁵ The Church claimed that it was delayed in making repairs due to the recent weather. Finally, the Church stated it completed the repairs to the individual antenna structure fences and was scheduled to repair the perimeter gate the week of May 6, 2013.⁶

III. DISCUSSION

4. Section 503(b) of the Communications Act of 1934, as amended (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.⁷ 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.⁸ 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,⁹ and the Commission has so interpreted the term in the Section 503(b) context.¹⁰ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹¹ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹²

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

5. Section 73.49 of the Rules states that antenna structures “having radio frequency potential at the base . . . must be enclosed within effective locked fences or other enclosures.”¹³ Individual fences

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San Juan Office, Enforcement Bureau at 1 (May 3, 2013) (on file in EB-FIELDSCR-13-00007724) (*NOV Response*).

⁵ *Id.*

⁶ *Id.* at 2. The Church provided photographs of the repairs to the individual base fences.

⁷ 47 U.S.C. § 503(b).

⁸ 47 U.S.C. § 312(f)(1).

⁹ 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 . . .”).

¹⁰ *See, e.g., Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

¹¹ *See, e.g., Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹² 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.

¹³ 47 C.F.R. § 73.49.

need not be installed if the antenna structures are contained within a protective property fence.¹⁴ The Station's three antenna structures have radio frequency potential at their bases.¹⁵ On April 3, 2013 and again on April 8, 2013, an agent from the San Juan Office observed that the Station's three antenna structures were not enclosed within effective locked fences. The agent observed that all three of the individual fences were missing pickets, which allowed easy access to the bases. Moreover, one of the individual fences had a portion on the ground and an open gate. The agent also observed that the perimeter property fence was unlocked and had a section that had fallen down. The Church admitted that the individual fences and perimeter property fence were damaged in the fall of 2012 and early 2013, respectively. Therefore, based on the evidence before us, we find that the Church apparently willfully and repeatedly violated Section 73.49 of the Rules by failing to have an effective locked fence or other enclosure around the bases of its antenna structures.

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 tower fencing violation is \$7,000.¹⁶ 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.¹⁷ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that the Church is apparently liable for a total 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, The Catholic, Apostolic & Roman Catholic Church in Puerto Rico 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 Commission's rules.¹⁸

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, The Catholic, Apostolic & Roman Catholic Church in Puerto Rico **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 check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. The Catholic, Apostolic & Roman Catholic Church in Puerto Rico shall also send electronic notification on the date said payment is made to SCR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁹ When completing the FCC Form 159, enter the

¹⁴ *Id.*

¹⁵ See License File No. BR-20050214AAU.

¹⁶ *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.

¹⁷ 47 U.S.C. § 503(b)(2)(E).

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

¹⁹ An FCC Form 159 and detailed instructions for completing the form may be obtained at

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Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

10. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.20 If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

11. 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 1.16 and 1.80(f)(3) of the Rules.²¹ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, San Juan Office, US Federal Building Room 762, San Juan, PR 00918-1731, and include the NAL/Acct. No. referenced in the caption. Steckline Communications, Inc. also shall e-mail the written response to SCR-Response@fcc.gov.

12. 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 principles (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.

13. **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 First Class Mail to The Catholic, Apostolic & Roman Catholic Church in Puerto Rico at POB 9021967 San Juan, PR 00902-1967,

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<http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁰ See 47 C.F.R. § 1.1914.

²¹ 47 C.F.R. §§ 1.16, 1.80(f)(3).

and to its attorneys, Francisco R. Montero & Robert J. Schill at Fletcher, Heald and Hildreth, 1300 North 17th Street, 11th Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

Reuben Jusino
Resident Agent
San Juan Office
South Central Region
Enforcement Bureau