

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

In the Matter of)	
)	
Sound Communications, LLC)	File No.: EB-FIELDNER-13-00009899
Owner of Antenna Structure Number 1053420)	NAL/Acct. No.: 201432400005
Licensee of AM Station WENY)	FRN: 0019815109
Southport, New York)	Facility ID No.: 71510

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 2, 2014

Released: June 2, 2014

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

I. INTRODUCTION

1. We propose a penalty of \$7,000 against Sound Communications, LLC (Sound Communications) for apparently failing to enclose AM Station WENY's antenna structure in Southport, New York, within an effective locked fence. Sound Communications admitted to leaving a gate unlocked for several days so that personnel from a tower repair company could gain access to the antenna structure site in order to prepare a bid for a repair project. The unlocked gate was of particular concern to FCC agents because the antenna structure is located in a residential neighborhood.

2. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Sound Communications, licensee of Station WENY and owner of antenna structure number 1053420 (Antenna Structure) in Southport, New York, 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 locked fence. We conclude that Sound Communications is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000).

II. BACKGROUND

3. On July 11, 2013, at 7:00 p.m., an agent of the Enforcement Bureau's Philadelphia Office conducted a random inspection of the Antenna Structure, which is located along Milton Street in Southport, New York, and is utilized as the transmission antenna for AM Station WENY. During the inspection, the agent observed that the fence was in good condition, the gate was closed, the padlock was on the gate's hasp, but the padlock was not locked. The unlocked padlock allowed unrestricted access to the Antenna Structure which had radio frequency (RF) potential at its base and was located near a residential area. There was no perimeter fence around the property where the antenna structure was located.

4. On July 12, 2013, the agent spoke by telephone to the station engineer for Sound Communications, who reported that he was last at the site on or about June 29, 2013. He further reported that he left the gate unlocked that day so that a contractor could access the Antenna Structure.

5. On July 30, 2013, the Philadelphia Office issued Sound Communications a Notice of Violation for failing to enclose the Antenna Structure within an effective locked fence or other enclosure.²

¹ 47 C.F.R. § 73.49.

² See *Sound Communications, LLC*, Notice of Violation, V201332400035 (July 30, 2013) (on file in EB-FIELDNER-13-00009899).

On August 16, 2013, Sound Communications submitted a response to the Notice of Violation, confirming that the station engineer intentionally left the gate unlocked to allow personnel from a tower repair company to access the site in order to finalize a proposed bid for a tower repair project.³ Sound Communications also clarified that the station engineer was at the site on July 5, 2013, not on or about June 29, 2013, as previously reported by the station engineer.

III. DISCUSSION

6. 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.⁴ 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.⁵ 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,⁶ and the Commission has so interpreted the term in the Section 503(b) context.⁷ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁸ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁹

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

7. The evidence in this case is sufficient to establish that Sound Communications violated Section 73.49 of the Rules. 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.” Individual fences need not be installed if the antenna structures are contained within a protective property fence. Station WENY’s antenna structure has radio frequency potential at the base.¹⁰ On July 11, 2013, an

³ Letter from Alisa R. Lahey, Drinker Biddle & Reath LLP, Counsel for Sound Communications LLC, to Philadelphia Office, Northeast Region, Enforcement Bureau (August 16, 2013) (on file in EB-FIELDNER-13-00009899) (*NOV Response*).

⁴ 47 U.S.C. § 503(b).

⁵ 47 U.S.C. § 312(f)(1).

⁶ 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 . . .”).

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

⁸ 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).

⁹ 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.

¹⁰ See License File No. BL-19990804DE.

agent from the Philadelphia Office observed that the gate for the fence surrounding the Antenna Structure was left unlocked during a time when Station WENY was in operation. Sound Communications admitted in its *NOV Response* that the fence had intentionally been left unlocked by the station engineer on July 5, 2013, and that it remained open until the agent's inspection on July 11, 2013. There was no perimeter fence surrounding the property. Based on the evidence before us, we find that Sound Communications apparently willfully and repeatedly violated Section 73.49 of the Rules by failing to have an effective locked fence or other enclosure around the base of its antenna structure.

B. Proposed Forfeiture

8. 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 \$7,000.¹¹ 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.¹² Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Sound Communications is apparently liable for a total forfeiture in the amount of \$7,000.

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, 0.204, 0.311, 0.314, and 1.80 of the Commission's rules, Sound Communications, LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seven thousand dollars (\$7,000) for violations of Section 73.49 of the Rules.¹³

10. **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 Sound Communications LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. 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. Sound Communications shall also send electronic notification on the date said payment is made to NER-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁴ When completing the FCC Form 159, enter the 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

¹¹ *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.

¹² 47 U.S.C. § 503(b)(2)(E).

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

¹⁴ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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.

12. 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. 20554.¹⁵ 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.

13. 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.¹⁶ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Northeast Region, Philadelphia Office, One Oxford Valley Building, Suite 404, 2300 East Lincoln Highway, Langhorne, Pennsylvania 19047 and include the NAL/Acct. No. referenced in the caption. Sound Communications also shall e-mail the written response to NER-Response@fcc.gov.

14. 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.

15. **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 Sound Communications LLC at 15 Woodland Way, Painted Post, New York 14870 and Drinker Biddle & Reath LLP, 1900 K Street, N.W., Washington, D.C. 20005-1209.

FEDERAL COMMUNICATIONS COMMISSION

David C. Dombrowski
District Director
Philadelphia Office
Northeast Region
Enforcement Bureau

¹⁵ See 47 C.F.R. § 1.1914.

¹⁶ 47 C.F.R. §§ 1.16, 1.80(f)(3).