

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

In the Matter of)	
)	
WOYK, Inc.)	File No.: EB-10-PA-0308; EB-FIELDNER-
Licensee of Radio Station WOYK(AM))	13-000056628
Owner of Antenna Structure Number 1029251)	NAL/Acct. No.: 201232400004
York, Pennsylvania)	FRN: 0005023106
)	Facility ID No.: 73873

FORFEITURE ORDER

Adopted: September 5, 2014

Released: September 5, 2014

By the Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. We impose a penalty of \$5,600 against WOYK, Inc. for failing to enclose its antenna structure within an effective locked fence or other enclosure. The Commission's fencing rules protect the public by limiting access to areas with a high potential for radiofrequency exposure. WOYK does not deny that a broken hasp on the antenna structure fencing gate permitted unrestricted public access, but requests cancellation or reduction of the forfeiture because the broken hasp purportedly was due to vandalism, it repaired the broken hasp immediately, the violation was minor, and it has a history of compliance with the Commission's rules. As explained below, we do not cancel the proposed fine, but reduce it based on WOYK's history of compliance.

2. Specifically, we issue a monetary forfeiture to WOYK, owner of Antenna Structure Number 1029251 in York, Pennsylvania (Antenna Structure), for willfully and repeatedly violating Section 73.49 of the Commission's rules (Rules) by failing to enclose the Antenna Structure within an effective locked fence or other enclosure.¹

II. BACKGROUND

3. On May 22, 2012, the Enforcement Bureau's Philadelphia Office (Philadelphia Office) issued a Notice of Apparent Liability for Forfeiture (NAL) to WOYK proposing a \$7,000 forfeiture against it for failure to enclose the Antenna Structure within an effective locked fence or other enclosure.² As detailed in the *NAL*, agents from the Philadelphia Office conducted an inspection of the Antenna Structure and 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.³ Based on the condition of the hasp, the agents concluded that the hasp had been in disrepair for an extended period of time.⁴ The agents notified WOYK of the broken hasp and the fence was fixed that same day.⁵

¹ 47 C.F.R. § 73.49.

² *WOYK, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 5336 (Enf. Bur. 2012) (*NAL*). A comprehensive recitation of the facts and history of this case can be found in the *NAL* and is incorporated herein by reference.

³ *Id.* at 5336, para. 2.

⁴ *Id.* The *NAL* also noted that the property on which the Antenna Structure is located was not enclosed by a protective property fence. *See id.* Contrary to WOYK's assertion, this statement was not intended to suggest that (continued....)

4. In its *NAL Response*, WOYK does not deny that the unlocked fencing allowed unrestricted access to the base of the Antenna Structure. However, WOYK claims that cancellation of the proposed forfeiture is warranted because the four screws that affixed the hasp to the Antenna Structure fencing gate had been pulled out by vandals and therefore the violation was not willful.⁶ WOYK further claims that the forfeiture should be cancelled because it fixed the hasp immediately after receiving notice of the violation from the Philadelphia Office.⁷ In the alternative, WOYK asserts that a forfeiture reduction is justified because the violation was minor and WOYK has a history of compliance with the Rules.⁸

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),⁹ Section 1.80 of the Rules,¹⁰ and the *Forfeiture Policy Statement*.¹¹ In examining WOYK's *NAL Response*, Section 503(b)(2)(E) of the Act requires that the Commission take into account the nature, circumstances, extent, and gravity of the violation 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 As discussed below, we have fully considered WOYK's *NAL Response* in light of these statutory factors and find that cancellation of the forfeiture is not warranted, but that reduction of the forfeiture is justified based on WOYK's history of compliance with the Rules.

6. We find that WOYK willfully and repeatedly violated Section 73.49 of the Rules and has presented no basis for cancellation of the proposed forfeiture. WOYK claims that the violation was not willful because the hasp was vandalized.¹³ The Commission previously has cancelled forfeitures concerning AM antenna structure fencing violations due to vandalism.¹⁴ However, the Commission required the licensee to produce evidence that it regularly monitored the condition of its antenna site and the vandalism occurred "just prior" to the Commission's inspection.¹⁵ WOYK has not provided any (Continued from previous page) _____ the Rules require such a fence, but rather that individual fences around Station WOYK's antenna structures were required because there was no protective property fence. *See WOYK, Inc., Request for Rescission or Reduction of Forfeiture* (June 20, 2012) (on file in EB-FIELDNER-13-000056628) (*NAL Response*).

⁵ *NAL*, 27 FCC Rcd at 5336, para. 2.

⁶ *NAL Response* at 2, 4. WOYK takes issue with the *NAL*'s characterization of the hasp as "broken." *See NAL*, 27 FCC Rcd 5336-37, paras. 2, 5. In its *NAL Response*, WOYK claims that the hasp on the gate was not "broken," but rather the "four (4) screws affixing the hasp (and the lock) to the gate had been pulled out of the hasp." *NAL Response* at 2. As we find that WOYK presented insufficient evidence to justify a forfeiture cancellation due to vandalism, *see infra* para. 6, the characterization of the hasp's condition does not affect our analysis.

⁷ *NAL Response* at 3.

⁸ *Id.* At 4.

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 C.F.R. § 1.80.

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), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

¹² 47 U.S.C. § 503(b)(2)(E).

¹³ *NAL Response* at 4.

¹⁴ *See, e.g., Vernon Broad. Inc.*, Memorandum Opinion and Order, 60 Rad. Reg. 2d 1275 (1986) (cancelling an \$1,000 AM tower fencing violation forfeiture).

¹⁵ *Id.* at paras. 2-3.

documentation, such as a police report, supporting its claim that the broken hasp was the result of vandalism. In addition, while WOYK claims that vandalism is an ongoing problem at the antenna site, it did not take action to inspect the Antenna Structure regularly and make any necessary repairs to damaged fencing.¹⁶ As noted above, the condition of the hasp indicated that it had been in disrepair for an extended period of time.¹⁷ WOYK even concedes that the fencing hasp and lock were rusty from exposure to the elements and perhaps more susceptible to damage by vandals.¹⁸ Given that WOYK cannot show that the vandalism of the hasp occurred shortly before the Philadelphia Office's inspection or that it undertook any good faith compliance measures to address known vandalism issues, we decline to cancel the proposed forfeiture.

7. We similarly reject WOYK's claim that forfeiture cancellation is warranted because it fixed the hasp immediately after receiving notice of the violation from the Philadelphia Office. While the Commission will generally reduce an assessed forfeiture based on the good faith corrective efforts of a violator, those corrective efforts must be taken *prior* to notification of the violation.¹⁹ As the Commission has repeatedly stated, "corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations."²⁰ Consequently, we have reduced proposed forfeitures when a licensee demonstrates that it contracted to resolve a violation prior to inspection.²¹ WOYK has presented no evidence that it purchased a new hasp or took any other remedial actions to fix the Antenna Structure's fencing prior to the Philadelphia Office inspection. We therefore decline to cancel the proposed forfeiture.

8. WOYK also requests a forfeiture reduction, claiming that the violation was minor and it has a history of compliance with the Rules. When adopting Section 73.49 of the Rules, the Commission stated that the AM antenna structure fencing requirement "is necessary to protect the general public."²² We have also warned that "[f]ailure to maintain an effective locked fence in accordance with Section 73.49 of the Rules constitutes a serious public safety issue because it exposes the public to hazardous electrical charge."²³ WOYK's failure to maintain a locked fence is especially troubling, as the Antenna

¹⁶ See *id.* at para. 2 (noting that, due to past instances of vandalism to its antenna site, the licensee "inspects it regularly and immediately makes necessary repairs"); *Frandsen Media Co.*, Forfeiture Order, DA 14-1073 (Enf. Bur. July 29, 2014) (declining to cancel proposed forfeiture when licensee had not inspected FM transmitter signage for at least five months in response to known vandalism issues).

¹⁷ See *JMK Commc'ns, Inc.*, Forfeiture Order, 28 FCC Rcd 6215, 6215, para. 2 (Enf. Bur. 2013) (observing condition of fencing suggested that it was damaged for a significant period of time).

¹⁸ *NAL Response at 2-3.*

¹⁹ See, e.g., *Sutro Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 15274, 15277, para. 10 (2004) (stating that the Commission will generally reduce a forfeiture "based on the good faith corrective efforts of a violator when those corrective efforts were taken prior to Commission notification of the violation"); *Catholic Radio Network of Loveland, Inc.*, Forfeiture Order, 29 FCC Rcd 121, 122-23, para. 5 (Enf. Bur. 2014) ("The Commission will generally reduce an assessed forfeiture based on the good faith corrective efforts of a violator when those corrective efforts were taken *prior* to Commission notification of the violation.") (emphasis in original); *Argos Net, Inc.*, Forfeiture Order, 28 FCC Rcd 1126, 1127, para. 4 (Enf. Bur. 2013) ("[C]orrective action taken after notification or inspection by the Commission does not mitigate the violation . . .").

²⁰ See, e.g., *Seawest Yacht Brokers*, Notice of Forfeiture, 9 FCC Rcd 6099, 6099, para. 7 (1994) (citations omitted); *Exec. Broad. Corp.*, 3 FCC 2d 699, 700, para. 6 (1966) ("The fact that prompt corrective action was taken . . . does not excuse the prior violations.").

²¹ See, e.g., *Bold Gold Media WBS, L.P.*, Forfeiture Order, 29 FCC Rcd 6016 (Enf. Bur. 2014) (reducing proposed forfeiture where licensee contracted to acquire required Emergency Alert System equipment prior to inspection).

²² Review of Technical and Operational Regulations, 51 Fed. Reg. 2707 (Jan. 21, 1986).

²³ *Greenwood Acres Baptist Church*, Memorandum Opinion and Order, 22 FCC Rcd 1442, 1445, para. 10 (Enf. Bur. 2007); see *Pilgrim Commc'ns, Inc.*, Forfeiture Order, 19 FCC Rcd. 12251, 12252, para. 6 (Enf. Bur. 2004) (continued....)

Structure is located nearby a residential area.²⁴ We therefore decline to reduce the proposed forfeiture based on WOYK's claim the violation was minor. However, we agree that a forfeiture reduction is warranted based on WOYK's history of compliance with the Rules and we reduce the penalty imposed to \$5,600.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Rules, WOYK, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five thousand six hundred dollars (\$5,600) for violations of Section 73.49 of the Rules.²⁵

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.²⁶ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.²⁷ WOYK, Inc. shall send electronic notification of payment to NER-Response@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁸ 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 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.

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("Effective base fencing is an important safety requirement to prevent physical contact with the . . . antenna structure.").

²⁴ See *Birach Broad. Corp.*, Notice of Apparent Liability for Forfeiture and Order, DA 14-885, para. 1 (Enf. Bur. June 26, 2014) (noting that damaged fences presented a "particular public safety concern" when the antenna structures were located in a residential neighborhood).

²⁵ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 73.49.

²⁶ 47 C.F.R. § 1.80.

²⁷ 47 U.S.C. § 504(a).

²⁸ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

11. 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. 20554.²⁹ 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.

12. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by both First Class Mail and Certified Mail, Return Receipt Requested, to WOYK, Inc. at 1360 Copenhaffer Road, York, Pennsylvania 17404, and to Allan G. Moskowitz, Counsel for WOYK, Inc., at 10845 Tuckahoe Way, North Potomac, Maryland 20878.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
Regional Director, Northeast Region
Enforcement Bureau

²⁹ See 47 C.F.R. § 1.1914.