

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

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| In the Matter of |) | |
| |) | |
| Equity Communications LP |) | File No.: EB-11-PA-0230 |
| |) | NAL/Acct. No.: 201232400007 |
| Licensee of AM Station WCMC |) | FRN: 0003747813 |
| |) | Facility ID No.: 70259 |
| Wildwood, New Jersey |) | |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 17, 2012

Released: July 17, 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 Equity Communications LP (Equity), the licensee of AM Station WCMC in Wildwood, New Jersey (Station), apparently willfully and repeatedly violated Section 73.49 of the Commission's rules (Rules)¹ by failing to enclose the Station's antenna structure (Antenna Structure) within an effective locked fence or other enclosure. We conclude that Equity is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On October 18, 2011, agents from the Enforcement Bureau's Philadelphia Office inspected the Station's antenna structure located on West 19th Avenue in Wildwood, New Jersey. The agents observed that the Antenna Structure, which is located in a residential neighborhood and has radio frequency potential at its base, was not enclosed by an effective locked fence or other enclosure. Although there were remnants of a fence, the portion of the fence that remained did not restrict access to the base of the antenna structure. The agents immediately contacted the Station's President and General Manager (President), who claimed that a hurricane had washed away a portion of the fence. The agents advised the President to either cease operating the Station until a fence could be installed or install a temporary fence to restrict access to the base of the antenna structure.

3. On October 25, 2011, an agent re-inspected the Antenna Structure and found that the Station was broadcasting and the fence around the antenna structure was in the same condition as it was during the October 18, 2011 inspection. The next day, the agent spoke with Equity's President, who stated that he was in contact with a contractor about installing a fence. The agent reiterated to Equity's President that he should install a temporary fence until a permanent fence can be installed. On October 28, 2011, Equity's President sent an e-mail to the agent, along with photographs, stating that a temporary chain link fence had been installed.

¹ 47 C.F.R. § 73.49.

4. On July 5, 2012, agents conducted a follow-up inspection of the Antenna Structure and observed that Equity had installed a permanent fence.

III. DISCUSSION

5. 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.² 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

6. 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.”⁸ Station WCMC’s antenna structure has radio frequency potential at its base. On October 18, 2011, agents found that a substantial portion of the fence that had previously enclosed the Antenna Structure was missing, thereby allowing unrestricted access to the structure’s base. When an agent returned to re-inspect the Antenna Structure on October 25, 2011, the agent found that, notwithstanding the earlier warning to either cease broadcasting or erect a temporary fence, the Station continued to broadcast without a repaired or temporary fence. Based on the evidence before us, we find that Equity apparently willfully and repeatedly violated Section 73.49 of the Rules by failing to enclose the Station’s antenna structure within an effective locked fence or enclosure.

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 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 . . .”).

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, para. 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.

B. Proposed Forfeiture Amount

7. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for failure to maintain an effective AM tower fence is \$7,000.⁹ 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.¹⁰ After consideration of these factors, we find that a \$3,000 upward adjustment in the base forfeiture amount is warranted. The Philadelphia Office previously issued a Notice of Apparent Liability for Forfeiture to Equity for, *inter alia*, its failure to enclose within effective locked fences the antenna structures used in the operation of another Equity station – AM Station WMID in Atlantic City, New Jersey.¹¹ The fact that Equity previously committed a similar violation and the fact that Equity did not immediately correct the violation at issue here demonstrates a deliberate disregard for the Commission's rules.¹² Accordingly, applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Equity is apparently liable for a total forfeiture in the amount of \$10,000.

IV. ORDERING CLAUSES

8. 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, Equity Communications LP is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violation of Section 73.49 of the Commission's rules.¹³

9. **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, Equity Communications LP **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. 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. Equity shall also send electronic notification of payment to NER-Response@fcc.gov on the date said payment is made.

11. 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

⁹ *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.

¹⁰ 47 U.S.C. § 503(b)(2)(E).

¹¹ See *Equity Communications LP*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 15187 (Enf. Bur. 2011).

¹² We note that we are not using the issuance of the prior NAL to Equity's prejudice as prohibited by Section 504(c) of the Act, 47 U.S.C. § 504(c), but rather are appropriately considering "the underlying facts of a prior violation that shows a pattern of non-complaint behavior." See *Forfeiture Policy Statement*, 12 FCC Rcd at 17103, para. 34; see also *Clean Credit, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 12881 (2010) at para. 7 (using the underlying facts from a prior NAL issued to Clean Credit, Inc. to support an upward adjustment in the proposed forfeiture amount).

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

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.

12. Any request for full payment 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 1.80(f)(3) and 1.16 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. Equity also shall email 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 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.

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

¹⁵ See 47 C.F.R. § 1.1914.

¹⁶ 47 C.F.R. §§ 1.16, 1.80(f)(3).

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 Equity Communications LP at 8025 Black Horse Pike, Suite 100-102, West Atlantic City, New Jersey 08232.

FEDERAL COMMUNICATIONS COMMISSION

Kevin Doyle
Acting District Director
Philadelphia District Office
Northeast Region
Enforcement Bureau