

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

In the Matter of
Wagenvoord Advertising Group, Inc.
Licensee of Radio Station KLRG-AM
Sheridan, AR
File No.: EB-FIELDSCR-12-00000481
NAL/Acct. No.: 201232620003
FRN: 0010300747
Facility ID No.: 14053

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: July 19, 2012

Released: July 19, 2012

By the District Director, New Orleans Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Wagenvoord Advertising Group, Inc. (Wagenvoord), licensee of Station KLRG-AM (Station), in Sheridan, Arkansas, 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 structure. We conclude that Wagenvoord is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000). In addition, we direct Wagenvoord to submit, no later than thirty (30) calendar days from the date of this NAL, a statement signed under penalty of perjury stating that its antenna structure complies with the Commission's fencing requirements.

II. BACKGROUND

2. On January 24, 2012, in response to a complaint, agents from the Enforcement Bureau's New Orleans Office (New Orleans Office) inspected the Station's antenna structure, while the station was in operation, and observed that over half of the fence surrounding the base of the antenna structure was lying on the ground. The agents also observed that there was no fence surrounding the perimeter of the property.

3. On January 25, 2012, agents from the New Orleans Office, accompanied by the Station's engineer, conducted an inspection of Station KLRG-AM's antenna structure while the station was in operation. Agents again observed that over half of the fence surrounding the Station's antenna structure was lying on the ground. The Station's engineer stated that he had noticed that the fence was down approximately two weeks prior to the inspection.

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

1 47 C.F.R. § 73.49.

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 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.”⁸ Individual tower fences need not be installed if the towers are contained within a protective property fence.⁹ Station KLRG-AM’s antenna structure has radio frequency potential at the base.¹⁰ On January 24 and 25, 2012, agents from the New Orleans Office observed that over half of the fence surrounding the Station’s antenna structure was lying on the ground, while Station KLRG-AM was in operation. Thus, the fence did not effectively enclose the base of the structure. The agents also did not observe a perimeter fence surrounding the property. Therefore, based on the evidence before us, we find that Wagenvoord 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.

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.

⁹ *Id.*

¹⁰ See License File No. BR-20120118AAE.

B. Proposed Forfeiture Amount and Reporting Requirement

6. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for failing to maintain AM transmission system fencing requirements 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 Wagenvoord is apparently liable for a forfeiture in the amount of \$7,000.

7. We direct Wagenvoord to submit a written statement, pursuant to Section 1.16 of the Rules,¹³ in addition to any statement it might submit pursuant to paragraph 9, signed under penalty of perjury by an officer or director of Wagenvoord, stating that the Station's antenna structure complies with the Commission's fencing rules and is enclosed by an effective locked fence or other enclosure. This statement must be provided to the New Orleans Office at the address listed in paragraph 10 within thirty (30) calendar days of the release date of this NAL.

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, Wagenvoord Advertising Group, 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.¹⁴

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 and Order, Wagenvoord Advertising Group, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. **IT IS FURTHER ORDERED** that Wagenvoord Advertising Group, Inc. **SHALL SUBMIT** a written statement, as described in paragraph 7, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order. The statement must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, New Orleans Office, 2424 Edenborn Avenue, Suite 460, Metairie, LA 70001. Wagenvoord Advertising Group, Inc. shall also e-mail the written statement to SCR-Response@fcc.gov.

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. Wagenvoord Advertising Group, Inc. will also send electronic notification on the date said payment is made to SCR-

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 C.F.R. § 1.16.

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

Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁵ 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.

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. 20554.¹⁶ 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.¹⁷ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, New Orleans Office, 2424 Edenborn Avenue, Suite 460, Metairie, LA 70001, and include the NAL/Acct. No. referenced in the caption. Wagenvoord Advertising Group, Inc. also shall email the written response to SCR-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.

¹⁵ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹⁶ See 47 C.F.R. § 1.1914.

¹⁷ 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 and Order shall be sent by both Certified Mail, Return Receipt Requested, and First Class Mail to Wagenvoord Advertising Group, Inc. at 2360 NE Coachman Rd., Clearwater, FL 33765.

FEDERAL COMMUNICATIONS COMMISSION

Walter Gernon
District Director
New Orleans Office
South Central Region
Enforcement Bureau