

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

In the Matter of)	
)	
Equity Communications LP)	File No.: EB-10-PA-0312;
)	EB-FIELDNER-12-00004385
Licensee of Station WMID and)	NAL/Acct. No.: 201232400001
Owner of Antenna Structure Number 1046225)	FRN: 0003747813
)	Facility ID: 1307
Atlantic City, New Jersey)	

FORFEITURE ORDER

Adopted: September 17, 2014

Released: September 17, 2014

By the Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. We impose a penalty of \$20,000 against Equity Communications LP (Equity) for failure to properly paint its antenna structure or enclose its antenna structure within an effective locked fence or other enclosure. Public safety is at risk when antenna structures are not properly illuminated and the Commission's fencing rules protect the public by limiting access to areas with a high potential for radiofrequency exposure. Equity does not deny that the paint on its structure was faded and chipped or that the gate on the southeast side of the structure was unlocked, but requests reduction of the forfeiture because it had strobe lights installed on the tower and repaired the gate as quickly as practicable and it has a history of compliance with the Commission's rules. We find these arguments provide insufficient basis to reduce the forfeiture and deny Equity's request.

2. Specifically, we issue a monetary forfeiture to Equity, licensee of AM Station WMID and owner of antenna structure number 1046225 (Antenna Structure), in Atlantic City, New Jersey, for willfully and repeatedly violating Section 303(q) of the Communications Act of 1934, as amended (Act)¹ and Sections 17.50(a) and 73.49 of the Commission's rules (Rules) for failure to repaint the Antenna Structure as often as necessary to maintain good visibility and enclose the Antenna Structure within an effective locked fence or other enclosure.²

II. BACKGROUND

3. On March 5, 2010, agents from the Enforcement Bureau's Philadelphia Office (Philadelphia Office) inspected the Antenna Structure located in Atlantic City, New Jersey. According to the Antenna Structure Registration (ASR) database, the Antenna Structure was required to be painted and lit.³ The agents observed that the paint on the Antenna Structure was faded and chipped, significantly reducing the Antenna Structure's visibility. The agents also found that an unlocked gate on the southeast side of the Antenna Structure allowed unrestricted access to the Antenna Structure, which had radio

¹ 47 U.S.C. § 303(q).

² 47 U.S.C. §§ 17.50(a), 73.49.

³ Pursuant to Section 17.21 of the Rules, antenna structures shall be painted and lit when they exceed 60.96 meters in height above ground. 47 C.F.R. § 17.21. The Antenna Structure is 106 meters in height above ground.

frequency potential at its base.⁴ The agents contacted the Antenna Structure owner and locked the gate before leaving the site.

4. On April 7, 2010, the Philadelphia Office issued a Notice of Violation (*NOV*) to Equity for failing to clean and repaint the Antenna Structure as required to maintain good visibility, in violation of Section 17.50(a) of the Rules, and for failing to enclose the Antenna Structure within an effective locked fence, in violation of Section 73.49 of the Rules.⁵

5. On May 6, 2010, the Philadelphia Office received Equity's response to the *NOV*.⁶ In the letter, Equity stated that it inspects the Antenna Structure several times per year and had been planning to address the faded and chipped paint issue for some time.⁷ Equity further stated that the Antenna Structure would be brought into compliance with the Rules by August 15, 2010, either by repainting the Antenna Structure or installing white strobe lighting.⁸ Equity also stated that, during its own site visits, it had never seen the Antenna Structure's gate left unlocked. Equity noted that several tenants lease space on the Antenna Structure and each of them have a key for the locks.⁹

6. On November 16, 2010, agents from the Philadelphia Office re-inspected the Antenna Structure to verify that the violations from the *NOV* had been corrected. The agents found that Equity had neither repainted the Antenna Structure nor installed strobe lights. The agents also found the gate on the northeast side of the Antenna Structure was unlocked, allowing unrestricted access to the Antenna Structure, which had radio frequency potential at its base. The agents immediately informed Equity's President and General Manager (President) about the open gate, which agents were unable to lock before leaving the site.

7. On November 17, 2010, the agents returned to the Antenna Structure site and found that the gate on the northeast side of the Antenna Structure was still unlocked. The agent contacted Equity's President, who informed the agent that a new lock would be installed immediately. Later that day, Equity's President contacted the agent and reported that a new lock had been installed on the gate at the northeast side of the Antenna Structure.

8. On December 8, 2010, agents from the Philadelphia Office again inspected the Antenna Structure with Equity's President and General Manager and Station WMID's Chief Engineer. The Antenna Structure still had not been repainted nor were strobe lights installed. The agent used the Federal Aviation Administration's (FAA) In-Service Aviation Orange Tolerance Chart (Tolerance Chart)¹⁰ to compare the

⁴ Section 73.49 of the Rules states that "antenna towers having radio frequency potential at the base must be enclosed with effective locked fences or other enclosures." 47 C.F.R. § 73.49. The fence surrounding the Antenna Structure has two gates for access. One gate is on the southeast side and the other gate is on the northeast side. The gate that was found unlocked on March 5, 2010 was the gate on the southeast side and agents observed the lock hanging on the fence.

⁵ See *Equity Communications LP*, Notice of Violation, V201032400035 (rel. April 7, 2010); see also 47 C.F.R. §§ 17.50, 73.49.

⁶ See Letter from Gary Fisher, President, Equity Communications LP, to Gene Stanbro, District Director, Philadelphia Office (May 6, 2010) (on file in EB-FIELDNER-12-00004385).

⁷ *Id.* at 1.

⁸ *Id.* Antenna structure owners may, if approved by the Federal Aviation Administration (FAA), install white strobe lighting in lieu of paint. On February 15, 2011, Equity received this approval from the FAA.

⁹ *Id.* at 2.

¹⁰ The Color Tolerance Charts from the FAA provide a method for visually comparing the paint on the tower against the chart colors, which reflect the FAA's paint color specifications. These Color Tolerance Charts are based on the recommendations contained in National Bureau of Standards Report NBSIR 75-663, COLOR REQUIREMENTS FOR THE MARKING OF OBSTRUCTIONS, by R.L. Booker.

paint on the Antenna Structure with the standard in the Tolerance Chart. The paint on the Antenna Structure failed the Tolerance Chart test. On January 7, 2011, Station WMID's Chief Engineer reported that Equity had installed white strobe lighting in lieu of paint.

9. On October 31, 2011, the Philadelphia Office issued a Notice of Apparent Liability for Forfeiture and Order (*NAL*)¹¹ to Equity for failure to repaint the Antenna Structure as often as necessary to maintain good visibility, in violation of Section 17.50(a) of the Rules and failure to enclose the Antenna Structure within an effective locked fence or enclosure, in violation of Section 73.49 of the Rules. Equity filed a response to the *NAL* on November 22, 2011. Equity does not dispute the findings in the *NAL*, but requests a reduction in the proposed forfeiture based on its immediate efforts to bring the Antenna Structure into compliance with the Rules and its overall history of compliance with the Rules.¹²

III. DISCUSSION

10. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,¹³ Section 1.80 of the Rules,¹⁴ and the *Forfeiture Policy Statement*.¹⁵ In examining Equity's 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.¹⁶ As discussed below, we have fully considered Equity's response to the *NAL* in light of these statutory factors and find that reduction of the forfeiture is not warranted.

11. We affirm the findings in the *NAL* regarding the faded and chipped paint on the Antenna Structure and the unlocked gates surrounding the Antenna Structure. As described above, agents from the Philadelphia Office found that the paint on the Antenna Structure was faded and chipped on March 5, 2010, November 16, 2010, and December 8, 2010, in violation of Section 17.50(a) of the Rules. Similarly, agents from the Philadelphia Office found that unlocked gates at the Antenna Structure site allowed unrestricted access to the base of the Antenna Structure from the southeast side on March 5, 2010, and from the northeast side on November 16 and 17, 2010, in violation of Section 73.49 of the Rules. Equity does not dispute these findings. Accordingly, we find that Equity willfully and repeatedly violated Sections 17.50(a) and 73.49 of the Rules.

12. We decline to reduce the base forfeitures or the upward adjustment based on Equity's claim that it "took immediate and substantial action to correct these violations upon notification by the Commission." As Equity recognized in its *NAL Response*, it is long-standing Commission policy that corrective action taken to come into compliance with the Rules is expected, and such corrective action does not nullify or mitigate prior violations or associated forfeiture liability.¹⁷ Moreover, contrary to

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

¹² Letter from Gary Fisher, President, Equity Communications L.P., to Gene Stanbro, then District Director of the Philadelphia Office (Nov. 22, 2011) (on file in EB-FIELDNER-12-00004385) (*NAL Response*).

¹³ 47 U.S.C. § 503(b).

¹⁴ 47 C.F.R. § 1.80.

¹⁵ *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*).

¹⁶ 47 U.S.C. § 503(b)(2)(E).

¹⁷ *See, e.g., Argos Net, Inc.*, Forfeiture Order, 28 FCC Rcd 1126 (Enf. Bur. 2013) (finding that post-notification remedial efforts do not warrant mitigation of a forfeiture) (*citing Int'l Broad. Corp.*, Order on Review, 25 FCC Rcd 1538 (2010)).

Equity's claim, we find that its remedial actions with regard to the Antenna Structure were by no measure "immediate." Equity was first notified about the faded and chipped paint on March 5, 2010, but it was not until January 7, 2011, that the Station's Chief Engineer notified the agent that strobe lights were installed on the Antenna Structure in lieu of paint. We therefore affirm our finding in the *NAL* that Equity's actions reflected a deliberate disregard for the Rules and find that cancellation or reduction of the proposed forfeiture amount is not warranted on the basis of Equity's post-inspection remedial efforts.¹⁸

13. We also deny Equity's request to reduce the forfeiture based on its history of compliance with the Rules. First, Equity received the *NOV* in 2002 for failing to maintain the paint on antenna structure number 1046075 as required by Section 17.50(a) of the Rules and failing to notify the Commission of Equity's purchase of such antenna structure.¹⁹ Second, in 2011, agents in the Philadelphia observed that Equity failed to maintain an effective locked fence around an antenna structure used in the operation of AM Station WCMC in Wildwood, New Jersey.²⁰ For these reasons, we find that a reduction for history of compliance with the Rules is not warranted.

IV. ORDERING CLAUSES

14. 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, Equity Communications, LP **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for violations of Section 17.50(a) and 73.49 of the Commission's rules.²¹

15. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's rules within thirty (30) calendar days after the release date of this Forfeiture Order.²² 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.²³ Equity Communications, LP, shall send electronic notification of payment to NER-Response@fcc.gov on the date said payment is made.

¹⁸ Contrary to Equity's claim (*NAL Response* at 4), the Commission has issued upward adjustments based on a subject's deliberate disregard of the Rules in a wide range of cases, not just cases involving unlicensed radio station operation. *See e.g., Iglesia Cristiana Ebenezer, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 14642 (Enf. Bur. 2013) (assessing upward adjustment on FM Translator licensee for deliberate disregard of the Rules for continuing to operate its station at an unauthorized location even after it was specifically directed by FCC agents to cease the unauthorized operation); *see also Fellowship World, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 10246 (Enf. Bur. 2013) (assessing upward adjustment on broadcast licensee for operating its transmitter at an unauthorized location).

¹⁹ *Equity Communications, LP*, Notice of Violation (rel. Aug. 15, 2002) (on file in EB-02-PA-287).

²⁰ *Equity Communications, LP*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 8031 (Enf. Bur. 2012). Section 504(c) of the Act, 47 C.F.R. § 504(c), prohibits the use of a non-final, non-adjudicated forfeiture proceeding in any other proceeding before the Commission. The Commission, however, may consider the underlying facts associated with non-final, non-adjudicated forfeiture proceedings. *See Forfeiture Policy Statement*, 12 FCC Rcd at 17102-03, paras. 32-35. Such facts may be used to demonstrate "a pattern of non-complaint behavior against a licensee in a subsequent renewal, forfeiture, transfer, or other proceeding." *Id.* at 17103, para. 34; *see also Paulino Bernal Evangelism*, Memorandum Opinion and Order, 21 FCC Rcd 9532, 9535, para. 11 (Enf. Bur. 2006) (in considering whether a history of compliance exists, the Commission may consider violations occurring in cases where there has been no final determination), *modified on other grounds*, Order on Review, 23 FCC Rcd 15959 (Enf. Bur. 2006).

²¹ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 17.50(a), 73.49.

²² 47 C.F.R. § 1.80.

²³ 47 U.S.C. § 504(a).

16. 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.²⁴ 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.

17. Any request for 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. 20554.²⁵ 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.

18. **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 Equity Communications, LP, 8025 Black Horse Pike, Suite 100-102, West Atlantic City, New Jersey, 08232, and to its counsel, David D. Burns, Latham & Watkins LLP, 555 Eleventh Street, NW, Suite 1000, Washington, DC 20004.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
Regional Director, Northeast Region
Enforcement Bureau

²⁴ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁵ See 47 C.F.R. § 1.1914.