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

In the Matter of	)	
	)	
Equity Communications LP	)	File No.: EB-11-PA-0230;
	)	EB-FIELDNER-12-00004388
Licensee of AM Station WCMC	)	NAL/Acct. No.: 201232400007
	)	FRN: 0003747813
Wildwood, New Jersey	)	Facility ID No.: 70259

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 $10,000 against Equity Communications LP (Equity) 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. Equity does not deny that a portion of its fencing structure was missing allowing unrestricted public access, but requests a reduction of the forfeiture because it repaired the fence 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 WCMC in Wildwood, New Jersey (Station), for willfully and repeatedly violating Section 73.49 of the Commission's rules (Rules) by failing to enclose that Station's antenna structure within an effective locked fence or other enclosure.[1]

II. BACKGROUND

3. On October 18, 2011, agents from the Enforcement Bureau's Philadelphia Office (Philadelphia Office) inspected the Station's Antenna Structure located on West 19th Avenue in Wildwood, New Jersey. The Philadelphia Office 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.

4. 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. A permanent fence was installed on November 16, 2001.

[1] 47 U.S.C. § 73.49.

5. July 17, 2012, the Philadelphia Office issued a Notice of Apparent Liability for Forfeiture and Order (*NAL*)[2] to Equity for 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 August 16, 2012. Equity does not dispute the findings in the *NAL*, but requests a cancellation or 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.[3]

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),[4] Section 1.80 of the Rules,[5] and the *Forfeiture Policy Statement*.[6] 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.[7] As discussed below, we have fully considered Equity's response to the *NAL* in light of these statutory factors and find that cancellation or reduction of the forfeiture is not warranted.

7. We affirm the findings in the *NAL* regarding Equity's failure to maintain an effective locked fence around the Antenna Structure. As described above, an agent from the Philadelphia Office found that the Antenna Structure was not enclosed by an effective locked fence or other enclosure on October 18 and 25, 2011. Equity does not dispute these findings. Accordingly, we find that Equity willfully and repeatedly violated Section 73.49 of the Rules.

8. We decline to grant Equity's request to cancel or reduce the base forfeiture and/or the upward adjustment based on its claim that it "proceeded to remedy the situation as promptly as was practicable under the circumstances after having been notified of the violation by the Commission."[8] When the agent contacted Equity after the initial inspection on October 18, 2011, Equity's President reported that the fence had been damaged during a hurricane, thereby demonstrating that Equity was aware that the fence was damaged prior to being notified by the FCC agent. Even assuming that Equity was not aware of the damage to the fence until it was notified by the agent, we do not agree with Equity that it took action "as promptly as was practicable under the circumstances." When the agent returned to the site on October 25, 2011, the agent found the fence still in the same condition as it was on October 18, 2011. It was not until October 28, 2011, after the agent contacted Equity a second time, that a temporary fence was installed. A permanent fence was not installed until November 16, 2011. In any event, as Equity recognizes 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

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[2] *Equity Communications, LP*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 8031 (Enf. Bur. 2012).

[3] Letter from David L. Burns, Latham & Watkins, LLP, Counsel for Equity Communications L.P., to the Philadelphia Office (Nov. 22, 2011) (on file in EB-FIELDNER-12-00004388) (*NAL Response*).

[4] 47 U.S.C. § 503(b).

[5] 47 C.F.R. § 1.80.

[6] *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*).

[7] 47 U.S.C. § 503(b)(2)(E).

[8] *NAL Response* at 2.

forfeiture liability.[9] We therefore affirm our finding in the *NAL* that Equity's actions represent a deliberate disregard for the Rules that warrant both the base forfeiture amount and the upward adjustment.[10]

9. We also deny Equity's request to cancel or reduce the forfeiture based on its history of compliance with the Rules. First, we have determined that Equity received a Notice of Violation 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 antenna structure number 1046075.[11] Second, in 2010, FCC agents observed that the paint was severely faded on another antenna structure owned by Equity and that the antenna structure was not enclosed within an effective locked fence.[12] For these reasons, we find that a reduction for history of compliance with the Rules is not warranted.

IV. ORDERING CLAUSES

10. 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 ten thousand dollars ($10,000) for violation of Section 73.49 of the Rules.[13]

11. 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.[14] 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.[15] Equity Communications LP shall send electronic notification of payment to NER-Response@fcc.gov on the date said payment is made.

12. 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

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[9] *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)).

[10] 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).

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

[12] *See 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).

[13] 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 73.49.

[14] 47 C.F.R. § 1.80.

[15] 47 U.S.C. § 504(a).

payment, a completed FCC Form 159 (Remittance Advice) must be submitted.[16] 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.

13. 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.[17] 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.

14. **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

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

[17] *See* 47 C.F.R. § 1.1914.