

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

In the Matter of)	
)	
Culpeper Broadcasting Corporation)	File No.: EB-99-CF-014
WCVA (AM))	NAL/Acct. No.: X32340001
Culpeper, Virginia)	

FORFEITURE ORDER

Adopted: July 5, 2000

Released: July 6, 2000

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000) against Culpeper Broadcasting Corporation (“Culpeper”), licensee of AM station WCVA, Culpeper, Virginia, for willful violation of the provisions of Sections 73.49 and 73.1560(a) of the Commission’s Rules¹ (“the Rules”). The noted violations involve Culpeper’s failure to maintain an effective locked fence around the base of the WCVA antenna, and failure to maintain transmitter power between 90% and 105% of that authorized for WCVA.

2. On February 7, 2000, the Enforcement Bureau’s Columbia, Maryland Field Office, issued a Notice of Apparent Liability for Forfeiture (“NAL”) to Culpeper in the amount of nine thousand dollars (\$9,000).² Culpeper filed a response on March 8, 2000.

II. BACKGROUND

3. Station WCVA was inspected on November 16, 1999, by an agent of the Columbia Field Office. During the inspection, the agent found that several vertical boards were missing from the fence enclosing the base of the WCVA antenna tower. The gap in the fencing was sufficiently large to allow a person to climb through it and have easy access to the tower. The hinges on the gate in the fence were not attached to the fence post, allowing the gate to be opened easily by pushing on the hinge side, providing easy access to the tower. In addition, the agent found that the station was operating at a power level of 942 watts, well in excess of the 680 watts authorized by the station’s license, despite the fact that clear instructions were posted on the transmitting equipment which outlined both the Commission’s limits on operating power and how to determine the station’s operating power.

4. The Columbia Field Office issued a Notice of Violation to Culpeper on November 23, 1999, outlining these and several other violations found during the inspection. Culpeper responded in writing on December 7, 1999, addressing what had been done, and what was scheduled to be done, to

¹ 47 C.F.R. §§ 73.49 and 73.1560(a).

² *Notice of Apparent Liability for Forfeiture*, NAL Acct. No. X3234001 (Enf. Bur: Columbia Office, released February 7, 2000).

bring the station into compliance with the Rules. With regard to the fencing violation, Culpeper stated that the missing boards were replaced as of December 2, 1999, and that extra lock bolts had been added to secure the fence. Addressing the excessive power violation, the response further noted that the station's operators would be re-trained "to better understand the significance of the findings after taking transmitter readings," and would be instructed to contact the station's contract engineer if the transmitter measurements were not within the required limits of the station's authorized power.

5. The Columbia Field Office issued the subject NAL on February 7, 2000, assessing monetary forfeitures for the violations described above. In assessing the forfeiture amount for the tower fencing violation, the NAL noted the inspecting FCC agent's conclusion that Culpeper was aware of the deficiencies in the fence prior to the inspection, making this violation willful. In determining the appropriate forfeiture amount for the violations, the Columbia Field Office noted that *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* listed a base forfeiture amount of \$7,000 for the fencing violation and \$4,000 for the excessive power violation.³ After considering Culpeper's history of compliance with respect to its operation of WCVA, the Columbia Field Office reduced the forfeiture amount for the excessive power violation to \$2,000. No corresponding reduction was deemed to be appropriate for the fencing violation because of the safety issues associated with that violation. As such, the Columbia Field Office deemed \$9,000 to be the appropriate amount for these violations.

6. In its March 8, 2000 response to the NAL, Culpeper seeks cancellation or substantial reduction of the forfeiture amount assessed for these violations, arguing that its failure to maintain an effective locked fence around the base of its antenna tower was not a willful violation, and that its history of compliance with the Rules and good faith efforts to address and correct the violations at issue should mitigate the forfeitures assessed against it.

III. DISCUSSION

7. Section 73.49 of the Rules provides that an AM antenna tower having radio frequency potential at its base must be enclosed within an effective locked fence or other enclosure. At the time of the inspection, the fence surrounding Culpeper's antenna structure was neither effective nor locked. Culpeper maintains that, contrary to the finding in the NAL, it had no prior knowledge of the inadequacies of its fencing, and therefore the violation was not willful. However, prior knowledge of the violation is not necessary to sustain the issuance of an NAL. *See Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) (forfeiture upheld even though licensee did not know he was in violation of the Rules and corrected the error immediately upon notification). Section 312(f)(1) of the Communications Act of 1934, as amended ("the Act"), which also applies to Section 503(b) of the Act, provides: "the term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States."⁴ While Culpeper may not have known that the fence was damaged prior to the Commission's inspection, the fact remains that the fence around WCVA's antenna did not comply with the requirements of Section 73.49, as a result of Culpeper's inaction. Indeed, Culpeper's admission that it was not aware of either the missing planks or the detached hinges is particularly troubling in light of the antenna tower's proximity to the Sycamore Park Elementary School.

³ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); *see also* 47 C.F.R. § 1.80(b)(4), *Section I. - Base Amounts for Section 503 Forfeitures*.

⁴ *See* 47 U.S.C. § 312(f)(1); *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

8. As the Commission has previously stated, forfeitures were authorized “to impel broadcast licensees to become familiar with the terms of their licenses and the applicable Rules, and to adopt procedures, *including periodic review of operations*, which will insure that stations are operated in substantial compliance with their licenses and the Commission’s Rules.”⁵ [Emphasis added.] In order to fully comply with the provisions of Section 73.49, Culpeper would have had to monitor the condition of the fence periodically to verify that it was still an effective locked fence. Culpeper has offered no evidence indicating how frequently it checked the fence for damage or deficiencies, or whether it made routine maintenance checks of the fencing at all. Thus, this situation is distinguishable from *Vernon Broadcasting Inc.*,⁶ where a proposed forfeiture for inadequate fencing was cancelled because there was no indication that the licensee was aware of the broken fence before the FCC’s inspection, and the Commission specifically noted that there was “no indication that the licensee ... *had failed to monitor the condition of the antenna site.*” [Emphasis added.] The licensee in *Vernon Broadcasting* had submitted evidence that the fence was monitored regularly and had been inspected and found to be secure shortly before the FCC’s inspection.⁷ Therefore, we find that Culpeper willfully violated Section 73.49 by failing to maintain an effective locked fence around the base of its antenna tower.

9. Section 73.1560(a) of the Rules requires AM broadcast stations to maintain antenna input power between 90% and 105% of the station’s authorized power.⁸ At the time of the inspection, the station was found to be operating at 138% of its authorized power. Even though the station had posted instructions on the transmitter describing both the power limits and how to determine the station’s operating power, the transmitter was operating well in excess of the power limitations. “Licensees are expected to know and comply with the Commission’s rules, and will not be excused for violations thereof, absent clear mitigating circumstances.” See *In the Matter of Liability of Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.* and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970). Here, while Culpeper clearly knew the requirements of the Rule at issue, it still failed to comply with those requirements, and has offered no evidence of mitigating circumstances that would excuse this violation.

10. Culpeper argues that its overall compliance with the Commission’s Rules and its good faith efforts warrant mitigation of the forfeiture. We find that Culpeper’s corrective measures, while commendable, do not warrant mitigation of either violation. See *Sitka Broadcasting Co., Inc.* Further, Culpeper’s history of compliance was considered as a mitigating factor in the issuance of the NAL for the excessive power violation. Culpeper’s response does not demonstrate that further reduction of the forfeiture for this violation is warranted. We agree, however, that Culpeper’s history of overall compliance does warrant a reduction of the forfeiture for the fencing violation. Accordingly, we reduce the total forfeiture to \$7,000.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act,⁹ and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules,¹⁰ Culpeper Broadcasting Corporation **IS LIABLE**

⁵ *Southern California Broadcasting*, 6 FCC Rcd at 4387, quoting *Crowell Collier Broadcasting Corporation*, 44 FCC 2444, 2449 (1961).

⁶ *Vernon Broadcasting, Inc.*, 60 RR 2d 1275 (1986) (violations arose from vandalism occurring between time of licensee’s inspection and FCC’s inspection).

⁷ *Id.*

⁸ 47 C.F.R. § 1560(a).

⁹ 47 U.S.C. § 503(b).

FOR A MONETARY FORFEITURE in the amount of seven thousand dollars (\$7,000) for willful violation of the provisions of Sections 73.49 and 73.1560(a) of the Rules.

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules¹¹ within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹² Payment may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note "NAL/Acct. No. X32340001" referenced above. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.¹³

13. **IT IS FURTHER ORDERED** that, a copy of this Forfeiture Order shall be sent by Certified Mail - Return Receipt Requested to Culpeper Broadcasting Corporation in care of its counsel of record, Robert A. DePont, at 140 South Street, P.O. Box 386, Annapolis, Maryland 21404.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁰ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹¹ 47 C.F.R. § 1.80.

¹² 47 U.S.C. § 504(a).

¹³ See 47 C.F.R. § 1.1914.