

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

In the Matter of)	
)	
Greenwood Acres Baptist Church)	File No. EB-02-OR-302
Licensee of AM Broadcast Station KASO located)	NAL/Acct No. 200332620004
in Minden, Louisiana)	FRN 0007-7594-00

FORFEITURE ORDER

Adopted: May 28, 2004

Released: June 2, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a forfeiture in the amount of thirteen thousand six hundred dollars (\$13,600) to Greenwood Acres Baptist Church (“Greenwood”), licensee of AM broadcast station KASO, Minden, Louisiana, for willful and repeated violations of Sections 73.49 and 73.3526(a)(2) of the Commission’s Rules (“Rules”).¹ The noted violations involve Greenwood’s failure to maintain an effective locked fence enclosing its antenna tower, and failure to maintain all required material in its public inspection file.

2. On December 5, 2002, the Commission’s New Orleans, Louisiana Field Office (“New Orleans Office”) released a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) in the amount of seventeen thousand dollars (\$17,000).² Greenwood filed a response to the *NAL* on January 9, 2003.³

II. BACKGROUND

3. On September 12, 2002, an agent from the New Orleans Office inspected AM broadcast station KASO in Minden, Louisiana. At the time of the investigation, the agent observed that the fence enclosing KASO’s tower was unlocked and that a portion of the fence sported a hole large enough for a small person to easily step through.⁴ Also on September 12, 2002, the Commission’s agent conducted an inspection of the station’s public file and found that most of the required materials were missing. On December 5, 2002, the New Orleans Office issued an *NAL* for the fence and public inspection file violations. On January 9, 2003, Greenwood submitted a response to the *NAL*. In its response,

¹47 C.F.R. §§ 73.49, 73.3526(a)(2).

²See *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332620004 (Enf. Bur. New Orleans Office, Dec. 5, 2002).

³Greenwood Response to Notice of Apparent Liability for Forfeiture (“Response”) (filed Jan. 9, 2003).

⁴*NAL* at 1.

Greenwood disputes the New Orleans Office's determination that the fence was unlocked. Moreover, although Greenwood does not dispute that some items were missing from the public file (which it asserts is now complete), it argues that an admonishment is in order, and not a forfeiture. Greenwood seeks either a substantial reduction or cancellation of the forfeiture citing the immediate measures it took to correct the violations noted in the *NAL*, as well as an inability to pay any forfeiture at all. The response is accompanied by one partial-year financial statement.

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁵ Section 1.80 of the Rules,⁶ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines ("Forfeiture Policy Statement")*.⁷ In examining Greenwood's response, Section 503(b) 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 such other matters as justice may require.⁸

5. Section 73.49 of the Rules requires that antenna towers having radio frequency potential at the base must be enclosed within an effectively locked fence or other enclosure. On September 12, 2002, an agent from the New Orleans Office found that the gate on the fence enclosing KASO's tower was unlocked. Greenwood disputes the finding, arguing that the fence remains locked at all times except for maintenance purposes.⁹ However, the field agent clearly saw a broken hasp with a padlock that did not secure the gate to the fence. The jury-rigged fix – a chain that was to be wrapped around the fence and secured by a padlock to prohibit unauthorized access – was also useless because the padlock dangled from a chain which was hanging down alongside the fence. The agent also discovered that a portion of the fence contained a hole, rendering the fence ineffective.¹⁰ In its Response, Greenwood does not address the hole referred to in the *NAL*.¹¹ We find based on the record that Greenwood willfully violated Section 73.49 of the Rules.

6. Section 73.3526(a)(2) of the Rules requires that every permittee or licensee of an AM, FM, TV or Class A TV station in the commercial broadcast services shall maintain a public inspection file containing the material relating to that station, described in paragraphs (e)(1) through (e)(10) and (e)(13); and additionally, every commercial AM or FM station shall maintain for public inspection a file containing the material, relating to that station, described in paragraphs (e)(12) and (e)(14). On September 12, 2002 the Commission's agent determined that "KASO's public inspection file was missing

⁵47 U.S.C. § 503(b).

⁶47 C.F.R. § 1.80.

⁷12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁸47 U.S.C. § 503(b)(2)(D).

⁹Response at 3.

¹⁰*Id.*

¹¹*Id.* At the time of the September 12, 2002 Commission inspection, neither the station's general manager nor the contract engineer were present, and although two salespeople were in attendance and invited to look at the violations at issue, they declined. Thus, Greenwood's Response pertained to a different hole than the New Orleans Office referenced in its *NAL*. Greenwood describes an intermittent one-foot gap between the bottom of the fence and the water level of the pond that surrounds the promontory where the tower is located. Greenwood explains that an unprecedented drought resulted in two dry areas at each end of the fence. Greenwood states that after the subject inspection, and during the drought, Greenwood extended the fence deeper into the water of the pond so that, unless the pond went dry entirely, there would be no access to the tower by unauthorized persons. *Id.*

most of the required material including the station's most recent application to the Commission, a copy of the service contour map, a copy of the current ownership report, requests from candidates for political office, and the Issues/Programs Lists."¹² In its Response, Greenwood does not dispute that there were some items missing from the public file, but asserts that in cases "virtually identical" to the facts presented in the instant case, licensees were not fined, but merely admonished to bring the files up to date.¹³ This argument is not persuasive. The cases that Greenwood cites concern situations where one category of mandatory documents was missing from the subject station's file. In the instant case, the New Orleans Office found not one, but *five* categories of items missing. As such there is ample precedence to impose a monetary forfeiture,¹⁴ and we find that Greenwood's violation of Section 73.3526(a)(2) was willful.

7. Greenwood seeks a substantial reduction or cancellation of the proposed forfeiture by disputing the finding that the fence was locked. The licensee also claims a history of overall compliance, and a search of agency decisions confirms that KASO is not the subject of prior Commission Rule violations. In addition, Greenwood argues that the public file violation was minor and immediately cured, showing good faith. We note that the Commission has repeatedly stated that remedial actions taken to correct a violation are not mitigating factors warranting reduction of a forfeiture.¹⁵ Finally, Greenwood submits a copy of its financial statement for a portion of fiscal year 2002.

8. In analyzing economic-hardship claims, the Commission generally looks to companies' gross revenues as reasonable and appropriate yardsticks to determine their ability to pay assessed forfeitures.¹⁶ Indeed, the Commission stated that if companies' gross revenues are sufficiently large, the fact that net losses are reported, alone, does not necessarily signify inability to pay.¹⁷

9. As evidence of inability to pay, Greenwood submits a single financial statement covering January to September of 2002, which it claims "illustrates that the licensee is operating at a loss,"¹⁸ and "does not take into account the cost of the acquisition of the station [in 2000] or previous years' operating losses." Moreover, Greenwood avers that the station has "operated at a loss since it was acquired in September of 2000."¹⁹ Greenwood explains that the income of KASO "is largely from donations from the congregation . . . [with the] remainder from spot sales."²⁰ However, the *NAL* requires Greenwood to submit financial statements covering the most recent three-year period (from 2000 to 2002) in order to demonstrate its inability to pay. Additionally, Greenwood's mere assertions of previous years' operating losses and station acquisition costs are insufficient to underpin a finding of inability to pay. Because

¹²*NAL* at 1.

¹³Response at 4 citing *Tabbak Broadcasting Co. ("KAZM")*, 15 FCC Rcd 11,899 (2000) ("*Tabbak*"); *Sarkes Tarzian, Inc.*, 65 FCC 2d 127 (1977); *EZ New Orleans, Inc.*, 15 FCC Rcd 7164 (1999).

¹⁴See *KLDT-TV 55, Inc.*, 10 FCC Rcd 3198, 3200 (1995)(forfeiture assessed for failure to include three categories of documents in the public file).

¹⁵See, e.g., *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002); *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994); *Station KGVL, Inc.*, 42 FCC 2d 258, 259 (1973).

¹⁶See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 ¶ 8 (1992); see also *Forfeiture Policy Statement* at 17106-07 ¶ 43.

¹⁷See, e.g., *Local Long Distance, Inc.*, 15 FCC Rcd 24385 (2000), *recon. denied*, 16 FCC Rcd 10023, 10025, 6 (2001); *Independent Communications, Inc.*, 14 FCC Rcd 9605 (1999), *recon. denied*, 15 FCC Rcd 16060, 16060, 2 (2000); *Hoosier Broadcasting Corp.*, 14 FCC Rcd 3356 (CIB 1999), *recon. denied*, 15 FCC Rcd 8640, 8641, 7 (Enf. Bur. 2000).

¹⁸Response at 5.

¹⁹*Id.*

²⁰*Id.*

Greenwood has not provided sufficient information from which we can evaluate the financial condition of KASO, we must reject its inability to pay claim.

10. We have examined Greenwood's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement* as well. As a result of our review, we conclude that Greenwood willfully violated Sections 73.49 and 73.3526(a)(2) of the Rules and find that given Greenwood's past history of overall compliance, we conclude that a reduction of the forfeiture amount (\$17,000) to \$13,600 is appropriate.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,²¹ Greenwood Acres Baptist Church **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$13,600 for willfully violating Sections 73.49 and 73.3526(a)(2) of the Rules.

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules 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.²² Payment shall be made 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. 200332620004, and FRN 0003762150. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.²³

13. **IT IS FURTHER ORDERED** that, a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Fred A. Caldwell, Sr., Greenwood Acres Baptist Church, 7480 Greenwood Road, Shreveport, Louisiana, 71119, and to its counsel, Christopher D. Imlay, Booth, Freret, Imlay & Tepper, P.C., 14356 Cape May Road, Silver Spring, Maryland 20904-6011, (301) 384-5525.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

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

²²47 U.S.C. § 504(a).

²³See 47 C.F.R. § 1.1914.