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

In the matter of	)	
	)	
Pilgrim Communications, Inc.	)	FILE Number EB-02-DV-436
Station KDMN (AM),	)	NAL/Acct. No. 200332800008
Buena Vista, CO	)	FRN 0006-1624-73
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FORFEITURE ORDER

Adopted: June 30, 2004 **Released: July 2, 2004**

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), to Pilgrim Communications, Inc. ("Pilgrim"), licensee of AM Station KDMN, Buena Vista, Colorado, for willful and repeated violation of Section 73.49 of the Commission's Rules ("Rules").[1] The noted violation involves Pilgrim's failure to keep KDMN's antenna structure enclosed within an effective locked fence or other enclosure.

2. On December 31, 2002, the Commission's Denver, Colorado, Field Office ("Denver Office") issued a *Notice of Apparent Liability For Forfeiture*[2] ("*NAL*") in the amount of seven thousand dollars ($7,000) to Pilgrim for willful and repeated violation of Section 73.49 of the Rules. Pilgrim filed a response on January 30, 2003, and supplemented its response on February 20, 2003.

II. BACKGROUND

3. On October 28, 2002, a Commission agent from the Denver Field Office inspected the KDMN antenna site and observed that the fencing surrounding the base of the antenna was constructed close to the antenna structure and contained large gaps between wooden pickets permitting easy contact with the AM antenna from outside the fence. Further, the agent from outside the fence observed that the fence had broken pickets allowing access to children and small adults. On December 31, 2002, the Denver office issued an *NAL* for the failure to have an effective locked fence around KDMN's antenna structure in willful and repeated violation of Section 73.49 of the Rules.

4. In its January 30, 2003, response, as supplemented on February 20, 2003, Pilgrim did not contest the findings in the *NAL* regarding the violation. However, Pilgrim requested cancellation of the

[1] 47 C.F.R. § 73.49

[2] *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332800008 (Enf. Bur. , Denver Office, released December 31, 2002.

forfeiture, citing an inability to pay. In support, Pilgrim described losses from a prior burglary and submitted its tax returns from 1998-2001. Pilgrim also described remedial measures undertaken as further justification for forfeiture cancellation.

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),[3] Section 1.80 of the Rules,[4] and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd. 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999). In examining Pilgrim'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.[5]

6. Section 73.49 of the Rules requires that antenna towers having radio frequency potential at the base be enclosed within effective locked fences or other enclosures. According to Pilgrim's license, its antenna system is described as a series – excited or series fed radiator that radiates energy. The AM transmission fencing requirements thus apply to the antenna structure for Station KDMN. Effective base fencing is an important safety requirement to prevent physical contact with the KDMN antenna structure. The agent observed in her October 28, 2002, inspection of KDMN that the fence surrounding KDMN's antenna structure had aged broken and damaged pickets that had created sufficiently large gaps between the pickets which allowed access to the AM antenna. Based on the agent's inspection, we find that Pilgrim willfully and repeatedly violated Section 73.49 of the Commission Rules.[6]

7. In its response, Pilgrim acknowledges the deficiencies noted by the agent and cites efforts to cure them in seeking cancellation. The Commission has repeatedly stated that remedial actions taken to correct a violation are expected and as such are not mitigating factors warranting reduction of a forfeiture.[7] Additionally, in support of its financial hardship claim, Pilgrim submits copies of its 1998, 1999, 2000 and 2001 federal income tax returns.[8] The Commission has determined that, in general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.[9] After reviewing the financial data submitted, we find that the proposed monetary forfeiture should not be cancelled or reduced.[10]

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[3] 47 U.S.C. § 503(b).

[4] 47 C.F.R. § 1.80.

[5] 47 U.S.C. § 503(b)(2)(D).

[6] Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful, … 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…." *See Southern California Broadcasting Co.,* 6 FCC Rcd 4387 (1991). Repeated merely means that the act was committed or omitted more than once, or lasts more than one day, *See Southern California Broadcasting Co*., at 4388, ¶ 5; *Callais Cablevision, Inc*., 16 FCC Rcd 1359 at 1362, ¶ 9 (2001).

[7] *See, 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).

[8] Since we consider only the three most recent federal income tax returns, we are not considering the 1998 return.

[9] *See PJB Communications of Virginia, Inc.,* 7 FCC Rcd 2088, 2089 (1992).

[10] *Id.* at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of he violator's gross revenues); *Hoosier Broadcasting Corporation,* 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not

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8. We have examined Pilgrim's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Pilgrim Communications, Inc. willfully and repeatedly violated Section 73.49 of the Rules and find that cancellation of the proposed monetary forfeiture is not warranted.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act and sections 0.111, 0.311 and 1.80(f) of the Rules,[11] Pilgrim Communications, Inc. **IS LIABLE FOR A MONETARY FORFEITURE i**n the amount of seven thousand dollars ($7,000) for willfully and repeatedly violating Section 73.49 of the Rules.

10. 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.[12] 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. 200332800008, and FRN 0006-1624-73. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivable Group, 445 12th Street, S.W., Washington, D.C. 20554.[13]

11. **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 Pilgrim's Counsel, Marnie K. Sarver, Wiley Rein & Fielding, LLP, 1776 K Street, N.W., Washington, D.C. 20006.

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David H. Solomon
Chief, Enforcement Bureau

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deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Afton Communications Corp.,* 7 FCC Rcd 6741 (Com. Car. Bur. 1992) (forfeiture not deemed excessive where it represented approximately 3.9 percent of the violator's gross revenues). We have reviewed Pilgrim's financial data in this case and two other cases involving Pilgrim simultaneously and have determined it is able to pay all the forfeitures. *See Pilgrim Communications, Inc*., 19 FCC Rcd 8877 (Enf. Bur. 2004); *Pilgrim Communications, Inc.,* 19 FCC Rcd 8881 (Enf. Bur. 2004).

[11] 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

[12] 47 U.S.C. § 504(a).

[13] *See* 47 C.F.R. § 1.1914.