

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

In the Matter of)	
)	
State Broadcasting Corporation)	File No. EB-02-AT-340
Gulfport, Mississippi)	NAL/Acct. No. 200332480010
)	FRN 0005-0035-20
)	

FORFEITURE ORDER

Adopted: March 12, 2004

Released: March 16, 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 State Broadcasting Corporation (“*State*”), licensee of AM radio station WMLT, Dublin, Georgia, for willful violation of Section 73.49 of the Commission’s Rules (“*Rules*”).¹ The noted violation involves *State*’s failure to enclose one of its antenna structures within an effective locked fence or other enclosure.

2. On November 5, 2002, the Commission’s Atlanta, Georgia Office, (“*Atlanta Office*”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to *State* for a forfeiture in the amount of seven thousand dollars (\$7,000).² *State* filed a response to the *NAL*.

II. BACKGROUND

3. On August 27, 2002, while conducting tower safety inspections as part of a field-wide targeted tower safety compliance program, an agent from the Atlanta Office inspected the antenna array for WMLT. The agent observed that the fence surrounding one of the antenna structures was incomplete and broken, allowing access to the base of the antenna structure.

4. On November 5, 2002, the Atlanta Office issued a *NAL* to *State* for failure to enclose one of its antenna structures within an effective locked fence or other enclosure in willful violation of Section 73.49 of the Rules. In its response, *State* requests cancellation of the proposed forfeiture based on its corrective efforts and its participation in the Georgia Association of Broadcasters’ Alternative Broadcast Inspection Program (“*ABIP*”).

¹ 47 C.F.R. § 73.49.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332480010 (Enf. Bur., Atlanta Office, released November 5, 2002).

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) (“*Policy Statement*”). In examining State’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 broadcast licensees to maintain an effective locked fence or other enclosures around the base of an antenna tower having radiofrequency potential at the base. At the time of the inspection on August 27, 2002, one of the WMLT antenna structures was not enclosed within an effective locked fence or other enclosure. State’s response to the *NAL* indicates that it does not disagree that the fence was ineffective. State asserts that an entirely new fence, gate and lock were installed at the antenna structure sometime between November 5, 2002 and December 19, 2002. Thus, State asserts that there is now an effective, locked fence in place. However, we note that remedial actions taken to correct the violation, while commendable, are not mitigating factors.⁶ Accordingly, we conclude that State willfully violated Section 73.49 of the Rules.

7. Further, State asserts that WMLT is a participant in the Georgia Association of Broadcasters’ ABIP,⁷ and was awaiting inspection at the time the fencing violation was discovered. State contends that because WMLT was voluntarily participating in the ABIP, it was protected from the issuance of the *NAL*. We disagree. Initially, we note that State did not hold a valid certificate of compliance, because it had not yet been inspected. Thus, State was not entitled to the protections provided by the ABIP agreement, namely, protection from random, routine inspections. Moreover, based upon our review of a copy of the ABIP agreement in effect at the time of the inspection and issuance of the *NAL*,⁸ we further note that,

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ See, e.g., *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002); *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994); *Station KGVV, Inc.*, 42 FCC 2d 258, 259 (1973).

⁷ ABIP Programs are established pursuant to written agreements between FCC Field Offices and state broadcast associations. Under an ABIP agreement, a state broadcast association provides contract inspection services for a fee to its member stations. The inspector notifies the station of any actual or potential violations of the Commission’s rules and the station is then given a brief period of time to correct any deficiencies. Upon confirmation that any deficiencies have been corrected, the association sends a certificate of compliance to the station and to the relevant Field Office. Upon receipt of a certificate of compliance, the Field Office agrees not to conduct routine random inspections of the station for the period covered by the certificate.

⁸ State associations, including the Georgia Association of Broadcasters, recently signed new ABIP agreements with the Enforcement Bureau. The new agreements became effective on September 29, 2003, and similarly permit targeted tower safety inspections.

assuming, *arguendo*, State established that it had requested and paid for a yet to be performed Georgia Association of Broadcasters' station inspection, State would not have been protected from an inspection resulting from an external trigger, in this case, the targeted tower safety compliance program. Accordingly, the provision in the ABIP agreement providing that the FCC will terminate any attempted inspection of a station upon a showing that a Georgia Association of Broadcasters' inspection has been requested and paid for would not have exempted State from the type of inspection that resulted in issuance of the *NAL*.⁹

8. We have examined State's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement*. As a result of our review, we conclude that State willfully violated Section 73.49 of the Rules and affirm the forfeiture amount of \$7,000.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503 of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁰ State Broadcasting Corporation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of seven thousand dollars (\$7,000) for willful violation of 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.¹¹ Payment may 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 reference *NAL*/Acct. No. 200332480010 and FRN 0005-0035-20. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹²

⁹ See *Cumulus Licensing Corporation*, 18 FCC Rcd 21234, 21236 (Enf. Bur. 2003) (licensee was issued a forfeiture for failing to maintain an effective locked fence around an antenna tower even though it had received a certificate of compliance under an ABIP, because the violation was discovered during an inspection conducted as part of a targeted tower safety compliance program).

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

¹¹ 47 U.S.C. § 504(a).

¹² See 47 C.F.R. § 1.1914.

11. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail return receipt requested to State Broadcasting Corporation, P.O. Box 2639, Gulfport, Mississippi 39505.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau