

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

In the matter of)	
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Radio Bonners Ferry, Inc.)	FILE Number EB-02-ST-197
Licensee of AM Radio Station KBFI,)	NAL/Acct. No. 200332980001
Bonners Ferry, Idaho)	Frn 0007741952
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FORFEITURE ORDER

Adopted: March 17, 2004

Released: March 19, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of five thousand, six hundred dollars (\$5,600), to Radio Bonners Ferry, Inc. ("Bonners Ferry"), licensee of Station KBFI(AM), Bonners Ferry Idaho, for willful violation of Section 73.49 of the Commission's Rules.¹ The noted rule violation involves Bonners Ferry's failure to keep KBFI's antenna structure enclosed within an effective locked fence or other enclosure.

2. On October 2, 2002, the Commission's Seattle Washington's Resident Agent Office ("Seattle Office") issued a *Notice of Apparent Liability* ("NAL") in the amount of seven thousand dollars (\$7,000) to Bonners Ferry. Bonners Ferry filed a response on November 8, 2002 and supplemented its response on November 12, 2002.

II. BACKGROUND

3. On May 21, 2002, Commission agents from the Seattle Field Office inspected the KBFI antenna site and observed that the fencing around the antenna structure was leaning and the gate could not be closed or locked. On October 2, 2002, the Seattle office issued an *NAL* for the failure to have an effective locked fence around KBFI's antenna structure. On November 8, 2002, Bonners Ferry submitted a response to the *NAL*, requesting a substantial reduction or cancellation of the forfeiture, citing an inability to pay, Bonners Ferry's compliance history, remedial measures undertaken, and the physical location and seasonal ground conditions in the immediate area of the antenna structure.

¹ 47 C.F.R. § 73.49

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”),² Section 1.80 of the Rules,³ 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 Bonners Ferry’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 other such matters as justice may require.⁴

5. Section 73.49 of the Rules provides that antenna towers having radio frequency potential at the base must be enclosed within effective locked fences or other enclosures. The agents’ May 21, 2002, observations were that AM Station KBFI has a series fed radio frequency potential at the base of its antenna tower, thereby requiring an effective locked fence or other enclosure. The agents also observed that the gate was incapable of being either closed or locked as required by Section 73.49. Bonners Ferry admits the cited fence was deficient, resulting in its replacement rather than mere repair. Bonners Ferry argues that a combination of factors render it not liable for the imposition of a forfeiture. Bonners Ferry cites the physical factors of the structure’s remote, rural setting; the inaccessibility of the site due to the road closure from frost heaves, the location of cultivated fields on three sides of the structure, and a rail road track on the fourth side as mitigating factors. We disagree. The Rule requires an effective locked fence, which Bonners Ferry admittedly did not have. Moreover, it is undisputed that the agents were able to reach the location by road, and upon reaching the site found the antenna structure readily accessible, not behind the required effective locked fence. We find the fact that the Commission agents were able to reach the structure means that the structure was accessible at the time the violation was observed by the agents. We therefore need not further consider the factors cited by Bonners Ferry, as these factors reference previous circumstances, not the location as it existed at the time of the inspection. We find that Bonners Ferry’s failure to have an effective locked fence around the antenna structure for Station KBFI to be a willful violation of Section 73.49 of the Rules based on the then existing conditions (frost heaves had already occurred), as the roads were open, and thus, accessible.⁵ Bonners Ferry should have inspected the fence after the roads were reopened, but it failed to do so.

6. Bonners Ferry requests a substantial reduction or cancellation of the proposed forfeiture because it took immediate measures to remedy the violation noted by the *NAL*. 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.⁶ Additionally, Bonners Ferry submits copies of its financial statements for fiscal year 1999, 2000 and 2001 in support for its claim of inability to pay the proposed forfeiture amount. We note that Bonners Ferry supplemented its response with a declaration which included the statement that Station KBFI is part of and has generated a percentage of revenue of

² 47 U.S.C. § 503(b).

³ 47 C.F.R. § 1.80.

⁴ 47 U.S.C. § 503(b)(2)(D).

⁵ 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 “the 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).

⁶ See, e.g., *AT7T Wireless Services, Inc.*, 17 FCC Rcd. 21866, 21871 (2002); *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994); *Station KGV L, Inc.* 42 FCC 2d 258, 259 (1973).

Blue Sky Broadcasting. We must look to the totality of the circumstances surrounding Bonners Ferry's ability to pay the forfeiture. The parent company's ability to pay, therefore, is relevant in evaluating the subsidiary company's ability to pay the forfeiture.⁷ Because Bonners Ferry has not provided sufficient information from which we can evaluate the financial condition of its parent company, we must reject its inability to pay claim. Finally, Bonners Ferry submits its claim of an overall history of compliance with the Commission's Rules as a mitigating circumstance warranting a reduction in its forfeiture amount. We agree that the compliance record of both Bonners Ferry and its parent company, Blue Sky Broadcasting is a mitigating circumstance.

7. We have examined Bonners Ferry'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 Radio Bonners Ferry willfully violated Section 73.49 of the Rules and find that cancellation of the proposed monetary forfeiture is not warranted. However, we find that reduction of the proposed forfeiture is warranted because of the compliance record of both Bonners Ferry and its parent company, Blue Sky Broadcasting with the Commission's Rules. Accordingly, the forfeiture amount is reduced from seven thousand dollars (\$7,000) to five thousand, six hundred dollars (\$5,600).

IV. ORDERING CLAUSES

8. 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,⁸ Radio Bonners Ferry **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five thousand, six hundred dollars (\$5,600) for willfully violating Section 73.49 of the Rules.

9. 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.⁹ 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. 200332980001, and FRN 0007741952. 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. 20554.¹⁰

10. **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 Radio Bonners Ferry, Inc., c/o Kim Benefield, Blue Sky Broadcasting, Inc., 327 Marion Avenue, Sandpoint, ID 83864, and a copy to its counsel, Ellen Mandell Edmundson, Esquire, Edmundson & Edmundson, 1818 N Street, N.W., Suite 700, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

⁷ See, e.g., *Forfeiture Policy Statement* at 17158, ¶ 113. See *KASA Radio Hogar, Inc.*, 17 FCC Rcd 6256 (2002).

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

⁹ 47 U.S.C. § 504(a).

¹⁰ See 47 C.F.R. § 1.1914.

