

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

In the Matter of	)	
	)	File Number EB-05-SJ-025
A Radio Company, Inc.	)	
Licensee of Station WEGA	)	NAL/Acct. No.200632680001
P.O. Box 1488	)	
Vega Baja, PR 00694	)	FRN 0010555654
Facility ID # 69853	)	
	)	

**FORFEITURE ORDER**

**Adopted:** November 1, 2006

**Released:** November 3, 2006

By the Regional Director, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of fifteen thousand dollars (\$15,000) to A Radio Company, Inc. (“A Radio”), licensee of AM radio station WEGA in Vega Baja, Puerto Rico, for willful violation of Sections 73.49 and 73.3526 of the Commission’s Rules (“*Rules*”) and willful and repeated violation of Section 73.1350(a) of the Rules.<sup>1</sup> The noted violations involve A Radio’s failure to enclose an antenna tower having radio frequency potential at the base within an effective locked fence, its failure to make available a complete public inspection file, and its failure to operate its station in accordance with the terms of its station authorization.

**II. BACKGROUND**

2. On August 25, 2005, in response to a complaint, resident agents from the Commission’s San Juan Office of the Enforcement Bureau (“San Juan Office”) conducted an inspection of station WEGA located in Vega Baja, Puerto Rico. In response to a request to inspect the public file, the station was unable to produce any copies of any issues programs lists. The agent observed that the easternmost antenna structure, which had radio frequency potential at its base, was not enclosed within an effective locked fence. Moreover, the agent observed a sizable hole on the right side of the perimeter property fence, which would allow access to the property. Station WEGA is authorized to utilize three uniform cross section, series excited guyed towers. Its station authorization requires that they use a two-tower directional array during the day and a three-tower directional array at night. The station’s consulting engineer stated that the station had been operating its antenna system at night using the daytime directional parameters for more than one year. The consulting engineer provided copies of a report dated May 21, 2005 and a status report letter dated July 11, 2005, which he had provided to the station owner and which explicitly described problems with the equipment that switches the directional antenna system from daytime to nighttime patterns. The agent found no evidence that special temporary authority (“STA”) had been sought or granted, which would authorize nighttime operation using daytime directional parameters.<sup>2</sup>

<sup>1</sup> 47 C.F.R. §§ 73.49, 73.1350(a), 73.3526.

<sup>2</sup> Station WEGA submitted a request for special temporary authority on September 2, 2005 to operate with one non-directional antenna.

3. On October 25, 2005, the Resident Agent of the San Juan Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of \$15,000 to A Radio.<sup>3</sup> A Radio filed a response to the NAL dated January 11, 2006.

### III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.<sup>6</sup> In examining A Radio’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.<sup>7</sup>

5. Section 73.49 of the Rules requires that antenna towers having radio frequency potential at the base must be enclosed within effective locked fences or other enclosures. Individual tower fences need not be installed if the towers are contained within a protective property fence. On July 25, 2005, an agent observed that the easternmost antenna structure had radio frequency potential at the base and that it was not enclosed within any fence. The agent also observed a large hole in the right side of the perimeter property fence, which would allow access to the antenna structure. Thus, the antenna structure was not contained within a protective property fence.

6. In its response to the NAL, A Radio does not dispute that its tower was not enclosed within a traditional fence and that there was a hole in the perimeter property fence. It asserts the nearby sewage treatment plant flooded the area, creating a swampy area around the tower, which contains leeches and an occasional crocodile. It requests that the forfeiture be reduced or cancelled, because this swamp serves as an effective locked fence around the tower. It also claims it is impossible to maintain an intact perimeter property fence because of vandals. Although the swamp<sup>8</sup> may serve as a deterrent to individuals seeking to access the tower, it is not an “effective locked fence,” as required by the Rules.<sup>9</sup> Moreover, the fact that A Radio cannot prevent vandals from entering its property through the hole in the side of the perimeter fence highlights the importance of having a fence around its tower. Accordingly, we find no basis to cancel or reduce the forfeiture associated with this violation.

7. Section 73.1350(a) of the Rules states that each licensee is responsible for maintaining and operating its broadcast station in a manner which complies with the technical rules set forth elsewhere in this part and in accordance with the terms of the station authorization. Station WEGA’s authorization requires that they use a two-tower directional array during the day and a three-tower directional array at

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<sup>3</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200632680001 (Enf. Bur., San Juan Office, released October 25, 2005).

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

<sup>7</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>8</sup> The agents did note that the area surrounding the tower was flooded. However, they did not see leeches or crocodiles during their inspection on July 25, 2005.

<sup>9</sup> *See Pittman Broadcasting Services, LLC*, 19 FCC Rcd 15320, 15322 (Enf. Bur. 2004) (determining that marshy conditions or other “natural barriers” are not sufficient to constitute compliance with Section 73.49).

night. On July 25, 2005, the station's consulting engineer informed an agent that station WEGA had been transmitting with the directional daytime pattern at night for more than a year.

8. In its response to the *NAL*, A Radio does not dispute that it operated its station in a manner inconsistent with its station authorization for more than a year. It states that it inherited the station in a state of disrepair and was unaware of this particular problem until August 2005 because its consulting agent did not forward the consulting engineer's reports. It states once it became aware of this problem it took prompt steps to obtain an STA. These facts, however, provide no basis to cancel or reduce the forfeiture associated with this violation. Employees and contractors for A Radio intentionally operated the station on its behalf and did so in a manner inconsistent with the station's authorization. Indeed some of its contractors had actual knowledge that the station was operating inconsistent with the terms of the authorization. The "Commission has long held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors,"<sup>10</sup> and the Commission has "consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations."<sup>11</sup> Moreover, corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.<sup>12</sup>

9. Section 73.3526(e) of the Rules requires commercial broadcast stations to maintain for public inspection, a file containing materials listed in that section.<sup>13</sup> Section 73.3526(e)(12) requires licensees to place in the public inspection file, for each calendar quarter, a list of the programs that have provided the station's most significant treatment of community issues during the preceding three month period.<sup>14</sup> Copies of these lists must be maintained in the file until final action has been taken on the station's next renewal application. On July 25, 2005, in response to a request to inspect the station's public file, the station could not produce any radio issues/programs lists, and there was no evidence that these lists had ever been in the public file. In its response to the *NAL*, A Radio does not dispute the violation and states that the station manager has been trained on public file requirements.

10. Finally, A Radio requests that the forfeiture be reduced because it is a new licensee and because it acquired the station in serious disrepair. We do not find these arguments persuasive. A Radio should have researched the station's condition prior to purchasing it and could have insisted the previous owner correct any violations prior to consummation of the sale. At a minimum, however, A Radio should have determined the station's condition after it acquired it and should have corrected any violations shortly thereafter. A Radio operated the station for almost eight months before the date of the inspection and failed to take steps to correct several serious violations.

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<sup>10</sup> *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863,-64, para. 7 (2002); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34 (1991)(holding that a company's reliance on an independent contractor to construct a tower in compliance of FCC rules does not excuse that company from a forfeiture); *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972) (holding a licensee responsible for violations of FCC rules despite its reliance on a consulting engineer); *Petracom of Joplin, L.L.C.*, 19 FCC Rcd 6248 (Enf. Bur. 2004) (holding a licensee liable for its employee's failure to conduct weekly EAS tests and to maintain the "issues/programs" list).

<sup>11</sup> *American Paging, Inc. of Virginia*, Notice of Apparent Liability for Forfeiture, 12 FCC Rcd 10417, 10420, para. 11 (Enf. & Cons. Inf. Div., Wireless Tel. Bur. 1997) (quoting *Triad Broadcasting Company*, 96 FCC 2d 1235, 1244 (1984)).

<sup>12</sup> See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

<sup>13</sup> 47 C.F.R. § 73.3526(e).

<sup>14</sup> 47 C.F.R. § 73.3526(e)(12).

11. We have examined A Radio's response to the NAL pursuant to the statutory factors above, and in conjunction with the Forfeiture Policy Statement. As a result of our review, we conclude that A Radio willfully violated Sections 73.49 and 73.3526 of the Rules and willfully and repeatedly violated Section 73.1350(a) of the Rules. We find no basis for cancellation or reduction of the \$15,000 forfeiture proposed for these violations.

#### IV. ORDERING CLAUSES

12. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended,<sup>15</sup> and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,<sup>16</sup> A Radio Company, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$15,000 for violation of Sections 73.49, 73.1350(a) and 73.3526 of the Rules.

13. 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.<sup>17</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.<sup>18</sup>

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to A Radio Company, Inc. at its address of record; and an additional copy to A Radio's legal counsel, Audrey Rasmussen, Hall Estell Attorneys at Law, 1120 20<sup>th</sup> St. NW, Suite 700, North Building, Washington, DC 20036-3406.

#### FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton  
Regional Director, South Central Region  
Enforcement Bureau

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<sup>15</sup> 47 U.S.C. § 503(b).

<sup>16</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.49, 73.1350(a), 73.3526.

<sup>17</sup> 47 U.S.C. § 504(a).

<sup>18</sup> See 47 C.F.R. § 1.1914.