

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

In the Matter of	)	
	)	
GB Enterprises Communications Corp.	)	File Number EB-04-TP-098
Licensee of WHNR	)	
1505 Dundee Road	)	NAL/Acct. No. 200532700011
Winter Haven, Florida 33884	)	
	)	FRN 0009590217
	)	

**FORFEITURE ORDER**

**Adopted:** January 20, 2006

**Released:** January 24, 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 ten thousand five hundred dollars (\$10,500) to GB Enterprises Communications Corp. (“GB Enterprises”), licensee of station WHNR in Winter Haven, Florida, for willful and repeated violation of Sections 73.49 and 73.3526 of the Commission’s Rules (“Rules”).<sup>1</sup> The noted violations involve GB Enterprises’ failure to enclose its antenna structures within effective locked fences and failure to maintain a complete public inspection file.

**II. BACKGROUND**

2. On March 22, 2004, agents from the Commission’s Tampa, Florida Office of the Enforcement Bureau (“Tampa Office”) inspected radio station WHNR-AM at its studio/transmitter site located on 1505 Dundee Road, Winter Haven, Florida. The Tampa Office issued a Notice of Violation to GB Enterprises for various violations of the Rules, including violations of Sections 73.49 and 73.3526, for failing to enclose its antenna structures within effective locked fences and failing to maintain a complete public inspection file.<sup>2</sup> GB Enterprises responded to the Notice of Violation on November 29, 2004 and claimed to have corrected the noted violations.

3. On January 13, 2005, agents from the Tampa Office inspected radio station WHNR-AM at its studio/transmitter site located on 1505 Dundee Road, Winter Haven, Florida. At the time of the inspection, the station’s public file was missing the manual entitled “The Public and Broadcasting” and its radio issues/programs list. The agents also observed an approximately one-foot gap between the gate and fence of one of the station’s antenna structures and a missing gate for another structure’s fence.

4. On August 30, 2005, the District Director of the Commission’s Tampa Field Office of the Enforcement Bureau (“Tampa Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the

<sup>1</sup> 47 C.F.R. §§ 73.49, 73.3526.

<sup>2</sup> *Notice of Violation*, NOV No. V20043270006 (Enf. Bur., Tampa Office, May 5, 2004).

amount of \$10,500 to GB Enterprises.<sup>3</sup> GB Enterprises filed a response to the *NAL* on September 4, 2005, stating that it had corrected the violations cited in the *NAL*.<sup>4</sup>

### III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>5</sup> Section 1.80 of the Rules,<sup>6</sup> 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) ("*Forfeiture Policy Statement*"). In examining GB Enterprises' 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>

6. 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 March 22, 2004, agents from the Tampa Office inspected WHNR's three antenna structure array and found that the fences surrounding antenna structures one and two were not locked and that those fences had fallen down in several places. In response to the Notice of Violation, GB Enterprises stated that it did not know how the fences became damaged and that it repaired the fences shortly after the inspection. However, it also stated in its response that, following those repairs, its fences were damaged by hurricanes and that the additional repairs would be completed soon. On January 13, 2005 agents from the Tampa Office again inspected WHNR's three antenna structure array and noticed that the fences surrounding antenna structures one and two appeared similar to their condition on March 22, 2004, except that there were locks and chains attached to the gates. The agents also observed that the fence surrounding antenna structure three was missing its gate and that there was an approximately one-foot gap between the gate and the fence surrounding antenna structure two. Because the fences surrounding the antenna structures had large gaps and/or missing gates, the station's antenna structures were not enclosed within effective locked fences. Moreover, the agents observed that there was no protective property fence surrounding the perimeter of the property. GB Enterprises does not deny the violations noted in the *NAL* and merely states that the fences have been repaired. Thus, based on the evidence, we find that GB Enterprises willfully<sup>8</sup> and repeatedly<sup>9</sup> violated Section 73.49 of the Rules by failing to enclose its station's antenna structures within effective locked fences or other enclosures.

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<sup>3</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532700011 (Enf. Bur., Tampa Office, released August 30, 2005).

<sup>4</sup> The Tampa Office did not receive this response until December 15, 2005.

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

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

<sup>8</sup> 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).

<sup>9</sup> The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

7. Section 73.3526 of the Rules requires AM and FM broadcast stations to maintain for public inspection a public inspection file containing the material, relating to that station, described in paragraphs (e)(1) through (e)(10), (e)(12), (e)(13), and (e)(14) of this section.<sup>10</sup> On March 22, 2004, agents from the Tampa Office requested to inspect the station's public file. The public file was missing the written designation of the chief operator, the most recent ownership report, the Political File, the "The Public and Broadcasting" manual, and the radio issues/programs list. On January 13, 2005, agents from the Tampa Office again found that station's public file was incomplete. The file was missing the most recent version of "The Public and Broadcasting" manual and the radio issues/programs list. In its response to the *NAL*, GB Enterprises does not deny any of these facts and merely states that the station's public file has been updated and contains all of the required information. Thus, based on the evidence, we find that GB Enterprises willfully and repeatedly violated Section 73.3526 of the Rules by failing to make available a complete public inspection file.

8. We have examined GB Enterprises' response to the *NAL* pursuant to the statutory factors above,<sup>11</sup> and in conjunction with the *Forfeiture Policy Statement*. We find no basis for cancellation or reduction of the \$10,500 forfeiture proposed for these violations.

#### IV. ORDERING CLAUSES

9. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended,<sup>12</sup> and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,<sup>13</sup> GB Enterprises Communications Corp. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$10,500 for violation of Sections 73.49 and 73.3526 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.<sup>14</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>15</sup>

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<sup>10</sup> 47 C.F.R. § 73.3526.

<sup>11</sup> Although GB Enterprises did not request reduction or cancellation of its proposed forfeiture, we note that corrective action taken to come into compliance with the Rules and cooperation with agents is expected, and does not nullify or mitigate any prior forfeitures or violations. See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

<sup>12</sup> 47 U.S.C. § 503(b).

<sup>13</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>14</sup> 47 U.S.C. § 504(a).

<sup>15</sup> 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 GB Enterprises Communications Corp. at its address of record.

**FEDERAL COMMUNICATIONS COMMISSION**

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