

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

In the Matter of	)	
	)	
M.R.S. Ventures, Inc.	)	File Number EB-07-OR-014
	)	
Licensee of WDSK-AM	)	NAL/Acct. No. 200732620004
Cleveland, MS	)	
	)	FRN 0005013222
Facility ID # 16554	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted:** August 16, 2007

**Released:** August 20, 2007

By the Associate Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Memorandum Opinion and Order (“Order”), we deny the petition for reconsideration filed by M.R.S. Ventures, Inc., (“M.R.S.”), licensee of radio station WDSK-AM, in Cleveland, Mississippi, of the *Forfeiture Order* issued June 8, 2007.<sup>1</sup> The *Forfeiture Order* imposed a monetary forfeiture in the amount of \$7,000 on M.R.S. for the repeated violation of Section 73.49 of the Commission’s Rules (“Rules”).<sup>2</sup> The noted violation involved M.R.S.’ failure to enclose an antenna tower with radio frequency potential at the base within an effective locked fence.

**II. BACKGROUND**

2. On February 7 and February 8, 2007, in response to a complaint, agents from the Commission’s New Orleans Field Office of the Enforcement Bureau (“New Orleans Office”) inspected radio station WDSK-AM in Cleveland, MS. On both days, the hasp on the gate of the fence enclosing the antenna structure, which has RF potential at the base, was broken, allowing easy access. The latch on the gate could not be secured because of the condition of the hasp. There was no perimeter fence around the property. On February 8, 2007, the station manager stated he was unaware of the condition of the fence surrounding the antenna structure.

3. On May 1, 2007, the New Orleans Office issued a *Notice of Apparent Liability for Forfeiture* to M.R.S. in the amount of seven thousand dollars (\$7,000), for the apparent repeated violation of Section 73.49 of the Rules.<sup>3</sup> M.R.S. submitted a response to the *NAL* requesting a reduction or cancellation of the proposed forfeiture. On June 8, 2007, the Enforcement Bureau (“Bureau”) released

<sup>1</sup> *M.R.S. Ventures, Inc.*, Forfeiture Order, DA 07-2349 (Enf. Bur. South Central Region June 8, 2007) (“*Forfeiture Order*”).

<sup>2</sup> 47 C.F.R. § 73.49.

<sup>3</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732620004 (Enf. Bur., New Orleans Office, May 1, 2007) (“*NAL*”).

the *Forfeiture Order*. The Bureau received M.R.S.' petition for reconsideration on July 7, 2007, requesting reduction or cancellation of the forfeiture.

### III. DISCUSSION

4. The 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 M.R.S.' petition, 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 any other such matters as justice may require.<sup>7</sup>

5. On February 7 and February 8, 2007, the gate of the fence surrounding WDSK-AM's antenna structure was not secured and could be easily opened, providing ready access to the base of the structure. This antenna structure was confirmed to have radio frequency at the base. There was no perimeter fence around the property. Therefore, the antenna structure was not enclosed within an effective locked fence or protective property fence on more than one day. In its petition for reconsideration, M.R.S. does not dispute these facts. Instead, it again requests that the forfeiture be reduced or cancelled, because the damage was not attributable to its neglect of the fence. M.R.S. again states that, during a self-inspection conducted a week prior to the agents' inspection, the fence was not damaged and that it repaired the fence within two hours subsequent to the inspection. M.R.S. also alleges that the forfeiture is large given that the violation occurred during a time when no other parties would be near the fence surrounding the tower.

6. We find that M.R.S. has not raised any issues that warrant reduction or cancellation of the forfeiture. M.R.S. asserts its violation was not willful, because it had recently inspected the fence, but this information has no bearing on whether the violation was repeated. Moreover, as pointed out in the *Forfeiture Order*, M.R.S.' statement that the fence had been inspected two days prior to the agents' inspection was not raised during the inspection, was not submitted under penalty of perjury, and was not substantiated by corroborating evidence.<sup>8</sup> It is also unclear why M.R.S. believes the violation occurred at a time when no other parties would be near the fence. In its response to the *NAL*, M.R.S. asserted that its antenna structure is located on a dead end road that is often closed. However, as noted in the *Forfeiture Order*, on February 7 and 8, 2007, the road was open, as the agents were able to reach the antenna structure. It is irrelevant whether anyone other than the agents actually accessed the fence, as someone *could* have accessed the tower due to the defective gate and lack of a perimeter fence. In addition, the forfeiture assessed for the violation, \$7,000, is not large, as it is equal to the base forfeiture amount for this type of violation. Finally, prompt corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.<sup>9</sup>

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<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).

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

<sup>8</sup> M.R.S.' petition for reconsideration was not submitted under penalty of perjury and did not include corroborating evidence.

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

7. M.R.S. also implies that the forfeiture would pose a financial hardship, because the station is currently silent and not generating revenue. However, M.R.S. failed to attach any financial documentation of its finances, so we are unable to determine whether a reduction based on inability to pay is warranted.

8. Therefore, we find no basis upon which to cancel or reduce the forfeiture imposed in the *Forfeiture Order*.

#### IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended,<sup>10</sup> and Section 1.106 of the Commission's Rules,<sup>11</sup> M.R.S. Ventures, Inc.'s petition for reconsideration of the June 8, 2007 *Forfeiture Order* **IS** hereby **DENIED**.

10. **IT IS ALSO ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>12</sup> M.R.S. Ventures, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of seven thousand dollars (\$7,000) for violation of Section 73.49 of the Rules.

11. Payment of the \$7,000 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>13</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>14</sup>

12. **IT IS FURTHER ORDERED** that this Order shall be sent by regular mail and by certified mail, return receipt requested, to M.R.S. Ventures, Inc. at its address of record.

#### FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon  
Associate Chief, Enforcement Bureau

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<sup>10</sup> 47 U.S.C. § 405.

<sup>11</sup> 47 C.F.R. § 1.106.

<sup>12</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.49.

<sup>13</sup> 47 U.S.C. § 504(a).

<sup>14</sup> See 47 C.F.R. § 1.1914.