

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

In the Matter of)	
)	
Christopher H. Bennett Broadcasting of Washington, Inc.)	File No.: EB-07-PO-052
)	
Licensee of AM Station KBMS Vancouver, Washington)	NAL/Acct. No.: 200732920003
Facility ID No. 11162)	FRN: 0005021084

FORFEITURE ORDER

Adopted: July 28, 2008

Released: July 30, 2008

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of five thousand, six hundred dollars (\$5600) to Christopher H. Bennett Broadcasting of Washington, Inc. (“Bennett Broadcasting”), licensee of AM radio station KBMS in Vancouver, Washington, for repeatedly violating Section 73.1125(a) of the Rules.¹ On May 22, 2007, the Enforcement Bureau’s Portland Resident Agent Office issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) in the amount of \$14,000 to Bennett Broadcasting for failing to enclose the KBMS antenna towers within effective locked fences or other enclosures, in violation of Section 73.49 of the Rules,² and for failing to maintain an accessible main studio in its community of license, in violation of Section 73.1125(a) of the Rules.³ In this *Order*, we consider Bennett Broadcasting’s arguments that the forfeiture should be cancelled because the KBMS antenna towers comply with Section 73.49; that Bennett Broadcasting did not willfully violate Section 73.1125(a) of the Rules, and that it has history of compliance with the Commission’s Rules.

II. BACKGROUND

2. On March 21, 2007, an agent from the Enforcement Bureau’s Portland Resident Agent Office contacted KBMS to conduct an inspection. The Portland agent was advised by a KBMS representative that the inspection could be made only by appointment. The agent left his contact telephone number and waited for a return call from the KBMS licensee.

3. On March 22, 2007, the agent was contacted by the owner of Bennett Broadcasting, who advised the agent to make an inspection appointment with his local station manager.⁴ The agent was then advised by the KBMS station manager that the appointment was set up for 10:00 a.m. the next day, at the combined KBMS transmitter and main studio located at 11197 N. Portland Road, Portland, Oregon. Later on March 22, 2007, at approximately 1:30 p.m., the Portland agent arrived and surveyed the KBMS

¹ 47 C.F.R. § 73.1125(a).

² 47 C.F.R. § 73.49.

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732920003 (Enf. Bur., Western Region, Portland Resident Agent Office, released May 22, 2007).

⁴ In its *Response*, Bennett Broadcasting disputes that it told the agent to make an appointment.

main studio at the given address of 11197 N. Portland Road. The agent observed a locked gate preventing access to the main road leading to the KBMS main studio. On the middle of the gate was a yellow "No Trespassing" warning sign posted.

4. On March 23, 2007, the Portland agent inspected the KBMS main studio. The agent asked the KBMS station manager why there was a locked gate in front of the road leading to the KBMS main studio, and the station manager replied that the individual who owned a residence next to the KBMS main studio and transmitter site wanted the locked gate installed to prevent the public from having access to his property.⁵

5. Later on March 23, 2007, the Portland agent inspected the antenna towers used by Bennett Broadcasting to broadcast KBMS. KBMS is a directional AM station, which uses three antenna towers to broadcast its signal: antenna structure #1034715; antenna structure #1034716; and antenna structure #1034717. According to its license, the KBMS antenna towers are series fed and, therefore, required to be fenced. Upon inspection of the KBMS antenna towers, the agent found that there were no effective locked fences or other barriers surrounding the bases of the antenna structures. The agent noted that there was no perimeter fence surrounding the entire KBMS-AM antenna site and that there was a residence approximately 300 yards from KBMS antenna site. The agent also noted that there were no radio frequency hazard warning signs posted near the bases of the towers.

6. On March 26, 2007, at approximately 12:15 p.m., the Portland agent returned to the KBMS main studio and transmitter site and he observed that KBMS did not have any locked fences surrounding the bases of the antenna towers. The agent also noted that the front door of the KBMS main studio was locked, and that there was no staff in the main studio.⁶

7. On April 5, 2007, Bennett Broadcasting provided a written statement indicating that due to local zoning restrictions, the KBMS antenna towers were built in 1984 on tall concrete piers without the required AM fencing.

8. On April 19, 2007, at 1:40 p.m., and on April 20, 2007, at 2:00 p.m., the Portland agent returned to the KBMS transmitter site and observed that KBMS still did not have any fences surrounding the bases of the antenna towers. The agent also noted that the front door of the KBMS main studio was locked, and that there was no staff in the main studio.

9. On May 22, 2007, the Portland Office issued a *NAL* in the amount of \$14,000 to Bennett Broadcasting, finding that Bennett Broadcasting apparently repeatedly violated Section 73.49 of the Commission's Rules ("Rules")⁷ by failing to enclose the KBMS antenna towers within effective locked fences or other enclosures and apparently repeatedly violated Section 73.1125(a) of the Rules by failing to maintain an accessible main studio in its community of license. Bennett Broadcasting filed a response ("*Response*") on June 15, 2007, arguing that the forfeiture should be cancelled because the KBMS antenna towers comply with Section 73.49 of the Rules. Bennett Broadcasting also argues that it did not willfully violate Section 73.1125(a) of the Rules, and that it has a history of compliance with the Rules.

⁵ The Portland agent also interviewed the neighbor, who told him that a key was left in the mailbox so that individuals who had permission could unlock the gate and access the property. The neighbor at this time gave the Portland agent permission to access the property by using the key in the mailbox to unlock the main gate.

⁶ During this visit, the agent also observed that the front gate to the property was locked, prohibiting public access to the main studio. The Portland agent unlocked the main gate using the key kept in the mailbox, as described above.

⁷ 47 C.F.R. § 73.49.

III. DISCUSSION

10. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁸ Section 1.80 of the Rules,⁹ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement").¹⁰ In examining Bennett Broadcasting'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.¹¹

11. Section 73.49 of the Rules states that antenna towers having radio frequency potential at the base (series fed, folded unipole, and insulated base antennas) must be enclosed within effective locked fences or other enclosures.¹² Individual tower fences need not be installed if the towers are contained within a protective property fence.¹³ In adopting the *Report and Order* promulgating the most recent amendment of Section 73.49, the Commission stated that "a fencing requirement is necessary to protect the general public."¹⁴

12. Bennett Broadcasting argues that it complies with Section 73.49 of the Rules. Specifically, Bennett Broadcasting states that the three antenna structures were constructed in 1984, prior to ownership of the station by Bennett Broadcasting, and that they were constructed on "12 foot pier bases" because of their location in a flood plain area, and that the construction of the antenna structures on the piers meets the "other enclosures" requirement of Section 73.49. Upon further review of the evidence, and the *Response*, along with the totality of the circumstances presented, we agree and cancel the proposed \$7,000 forfeiture to Bennett Broadcasting for violation of Section 73.49 of the Rules.

13. Section 73.1125(a) of the Rules requires the licensee of a broadcast station to maintain a main studio at one of the following locations: (1) within the station's community of license; (2) at any location within the principal community contour of any AM, FM or TV broadcast station licensed to the station's community of license; or (3) within twenty-five miles from the reference coordinates of the center of its community of licensed as described in Section 73.208(a)(1).¹⁵ In addition, the station's main studio must serve the needs and interests of the residents of the station's community of license. To fulfill this function, a station must, among other things, maintain a meaningful managerial staff presence at its main studio.¹⁶ The Commission has defined a minimally acceptable "meaningful presence" as full-time managerial and full-time staff personnel.¹⁷ In addition, there must be "management and staff presence"

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. § 1.80.

¹⁰ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

¹¹ 47 U.S.C. § 503(b)(2)(E).

¹² 47 C.F.R. § 73.49.

¹³ 47 C.F.R. § 73.49.

¹⁴ *Review of the Technical and Operational Regulations of Part 73, Subpart A, AM Broadcast Stations*, 59 Rad. Reg. 2d (Pike & Fischer) 927, ¶6 (1986) ("Report and Order").

¹⁵ 47 C.F.R. § 73.208(a)(1).

¹⁶ *See Main Studio and Program Origination Rules*, 2 FCC Rcd 3215, 3217-18 (1987), *clarified* 3 FCC Rcd 5024, 5026 (1988).

¹⁷ *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 (1991), *clarified* 7 FCC Rcd 6800 (1992).

on a full-time basis during normal business hours to be considered “meaningful.”¹⁸ Although management personnel need not be “chained to their desks” during normal business hours, they must “report to work at the main studio on daily basis, spend a substantial amount of time there and ... use the studio as a home base.”¹⁹ The Portland agent’s inspections conducted between 10:00 a.m. and 4:00 p.m. on March 23, 2007, March 26, 2007, April 19, 2007, and April 20, 2007, revealed that the site held out by Bennett Broadcasting as the main studio location for KBMS had no public access due to the locked gate and the “No Trespassing” warning sign. Other than the day of the appointment that the Portland agent made to inspect the KBMS main studio, the agent found no staff presence at the KBMS main studio.

14. Bennett Broadcasting argues that it did not willfully violate Section 73.1125(a) of the Rules. We note that the Portland Office proposed the forfeiture because Bennett Broadcasting apparently repeatedly violated Section 73.1125(a) of the Rules, not because Bennett Broadcasting willfully violated Section 73.1125(a) of the Rules.²⁰ Bennett Broadcasting also argues that security is an issue for its station “as a result of 9/11” and that it takes “strong security measures in regards to public access to the Main Studio and Tower site which is in protective property (the agent experienced this).” Regardless of whatever security measures Bennett Broadcasting takes, the Commission requires that the main studio be accessible to the public. A locked gate during regular business hours, however porous, as argued by Bennett Broadcasting, does not fulfill the requirement of accessibility by the public.

15. Bennett Broadcasting also argues that its “busy staff is not ‘tied to the studio’ at all hours while serving the needs of the community” and states that the Portland agent “would had been greeted had he waited a little longer.” The requirement regarding staffing of the main studio is clear: the Commission has defined a minimally acceptable “meaningful presence” as full-time managerial and full-time staff personnel.²¹ In addition, there must be “management and staff presence” on a full-time basis during normal business hours to be considered “meaningful.”²² The Portland agent visited the KBMS main studio four times during regular business hours. On March 23, 2007, he had an appointment with the station and found the main studio staffed. On March 26, 2007, April 19, 2007, and April 20, 2007, he returned, during regular business hours, with no appointment and found no staff at, and, consequently, no access to, the KBMS main studio. Consequently, we find that Bennett Broadcasting repeatedly violated Section 73.1125(a) of the Rules.

16. We are particularly troubled with the fact that during the agent’s initial attempt to inspect KBMS, he was told by a Bennett Broadcasting staffer that he would have to make an appointment. We caution Bennett Broadcasting that KBMS must be made available to Commission agents during the station’s business hours, or at any time it is in operation,²³ and that the KBMS main studio must be accessible to the public during regular business hours to ensure, among other reasons, that the public has access to the KBMS public inspection file.²⁴ Failure to maintain such accessibility in the future may result in further enforcement proceedings.

¹⁸ *Id.*

¹⁹ 7 FCC Rcd at 6802.

²⁰ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he 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.”

²¹ *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 (1991), *clarified* 7 FCC Rcd 6800 (1992).

²² *Id.*

²³ 47 C.F.R. § 73.1225(a).

²⁴ 47 C.F.R. § 73.3526(b),(c).

17. Bennett Broadcasting also argues that it has a history of compliance with the Commission's Rules. We have reviewed our records and we agree. Therefore, we reduce the proposed forfeiture for failing to maintain an accessible main studio in its community of license from \$7,000 to \$5,600. We have examined the *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 Bennett Broadcasting repeatedly violated Section 73.1125(a) of the Rules. Considering the entire record and the factors listed above, we find that reduction of the proposed forfeiture to \$5,600 is warranted.

IV. ORDERING CLAUSES

18. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Christopher H. Bennett Broadcasting of Washington, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$5,600 for repeated violations of Section 73.1125(a) of the Rules.²⁵

19. **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, that the proposed forfeiture in the amount of seven thousand dollars (\$7,000) issued to Christopher H. Bennett Broadcasting of Washington, Inc., for repeated violations of Section 73.49 of the Rules **IS CANCELLED**.

20. 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.²⁶ 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/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Christopher H. Bennett Broadcasting of Washington, Inc., shall also send electronic notification on the date said payment is made to WR-Response@fcc.gov.

²⁵ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.49.

²⁶ 47 U.S.C. § 504(a).

21. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Christopher H. Bennett Broadcasting of Washington, Inc., at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau