

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

In the Matter of	)	
	)	
Perihelion Global, Inc.	)	File Number: EB-08-OR-0013
	)	
Licensee of WTKN-AM	)	NAL/Acct. No. 200832620005
Corinth, Mississippi	)	
Facility ID # 31411	)	FRN: 0016367518
	)	

**FORFEITURE ORDER**

**Adopted:** November 21, 2008

**Released:** November 25, 2008

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 Perihelion Global, Inc. (“Perihelion”), licensee of station WTKN-AM, in Corinth, Mississippi, for willful and repeated violation of Sections 73.49, 73.1125(a) and 73.1201(a)(2) of the Commission’s Rules (“Rules”).<sup>1</sup> The noted violations involve Perihelion’s failure to enclose its antenna structure within an effective locked fence or other enclosure, failure to maintain a main studio, and failure to transmit the station identification.

**II. BACKGROUND**

2. On February 6, 2008, the Commission’s New Orleans Office of the Enforcement Bureau (“New Orleans Office”) received a complaint concerning station WTKN-AM, alleging multiple violations, including having no main studio. On February 8 and 11, 2008, an agent from the New Orleans Office called Perihelion and left messages to be contacted to schedule an inspection, but the agent’s calls were never returned.

3. On February 25, 2008, an agent from the New Orleans Office monitored WTKN-AM from 7 PM-CST to 9 PM-CST. During this time, the station did not air any of the required station identifications.

4. On February 26, 2008, an agent from the New Orleans Office inspected the transmitter site for station WTKN-AM. The agent observed a large hole in the locked gate for the protective fence surrounding the WTKN-AM antenna structure, which had radio frequency potential at its base. This hole allowed easy access to the antenna structure. The agent also monitored the station throughout the day, and the station did not broadcast any of the required station identifications.

5. Still on February 26, 2008, the agent attempted to locate and inspect the main studio for station WTKN-AM. The agent called the local number for station WTKN-AM and left messages asking to be called back. However, no employee from station WTKN-AM ever returned the agent’s calls. The agent

<sup>1</sup> 47 C.F.R. §§ 73.49, 73.1125(a), 73.1201(a)(2).

also contacted the owner of the land on which the transmitter is located, but he was unaware of a main studio address or a contact phone number for anyone locally employed by station WTKN-AM. The only known local address for the station was that of the transmitter site. The agent observed a small building in the same pasture as the antenna structure located within the antenna structure's protective fence. However, this building was not staffed by any employees and was accessible only through the hole in the antenna structure's protective fence. The transmitter site and building were not visible from the main road, there were no signs for the station on the building, fence, or main road, and there was no path from the private driveway to the building.

6. On February 26, 2008, the attorney for station WTKN-AM requested to modify a previously submitted Special Temporary Authority ("STA") request. The attorney sought permission for station WTKN-AM to operate without a main studio. In this communication, the attorney stated the main studio for WTKN-AM is located at the transmitter site and that weather had rendered the access path to the main studio impassable a majority of the time.

7. On February 27, 2008, the agent from the New Orleans Office visited the transmitter site again. The agent observed the same hole in the locked gate for the protective fence surrounding the antenna structure as had been observed the previous day. The agent monitored station WTKN-AM from 8:30 AM-CST to 11:15 AM-CST and observed that the station did not broadcast the required station identifications.

8. On February 28, 2008, station WTKN-AM's attorney called the New Orleans Office and spoke to the agent that attempted to inspect station WTKN-AM. This was the first contact the agent had with anyone representing station WTKN-AM.

9. On May 9, 2008, the New Orleans Office issued a *Notice of Apparent Liability for Forfeiture* to Perihelion in the amount of fifteen thousand dollars (\$15,000), for the apparent willful and repeated violation of Sections 73.49, 73.1125(a) and 73.1201(a)(2) of the Rules.<sup>2</sup> Perihelion submitted a response to the *NAL* requesting to pay the forfeiture in six installments.

### III. DISCUSSION

10. The proposed forfeiture amounts in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>3</sup> Section 1.80 of the Rules,<sup>4</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 Perihelion'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>5</sup>

11. Section 73.49 of the Rules<sup>6</sup> requires antenna towers having radio frequency potential at the base to be enclosed within effective locked fences or other enclosures. On February 26 and 27, 2008, an agent from the New Orleans Office observed a large hole in the gate of the locked fence surrounding the antenna structure for station WTKN-AM. This hole was large enough to provide easy access to the antenna structure. The antenna structure had radio frequency potential at its base.

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<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832620005 (Enf. Bur., New Orleans Office, May 9, 2008) ("*NAL*").

<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> 47 C.F.R. § 1.80.

<sup>5</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>6</sup> 47 C.F.R. § 73.49.

12. Section 73.1125(a) of the Rules requires broadcast stations to maintain a main studio.<sup>7</sup> “A station must equip the main studio with production and transmission facilities that meet applicable standards, maintain continuous program transmission capability, and maintain a meaningful management and staff presence.”<sup>8</sup> The Commission has defined a minimally acceptable “meaningful presence” as full-time managerial and full-time staff personnel.<sup>9</sup> On February 26, 2008, an agent from the New Orleans Office attempted to inspect station WTKN-AM’s main studio, but was unable to locate the main studio or contact any employees for the station. The agent subsequently learned that the station’s main studio was located at the transmitter site. However, the only building at the transmitter site was unstaffed during normal business hours, so the agent was unable to determine whether it was equipped with the required production and transmission facilities. The agent was unable to find any evidence that station WTKN-AM employed any local staff in the area. The building was also inaccessible to the public, because it was located in a pasture and was not visible from the road. There were no signs on the building or the road that would identify the building as the main studio, and there was no path going from the private driveway to the building. Finally, the building was located within the station’s locked antenna structure fence and was only accessible via the hole in the fence. The attorney for the station stated that the main studio was inaccessible to the public a majority of the time due to weather conditions.

13. Section 73.1201(a)(2) of the Rules<sup>10</sup> requires broadcast station identification announcements to be made hourly, as close to the hour as feasible, at a natural break in program offerings. An agent from the New Orleans Office monitored station WTKN-AM on February 25, 26, and 27, 2008 for several hours. Station WTKN-AM did not give station identifications at any time while the agent was monitoring.

14. In response to the *NAL*, Perihelion states it does not dispute any of the findings in the *NAL*. Perihelion adds that it was the victim of sabotage to devalue the company and claims someone intentionally programmed the computer to remove the station identifications a day or two before the initial complaint was filed. This claim, however, does not negate the fact that Perihelion broadcast without station identification prior to February 6, 2008 and until February 27, 2008. Perihelion also asserts it will take steps to ensure future compliance with the rules. However, post-inspection corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.<sup>11</sup> Therefore, based on the evidence before us, we find that Perihelion willfully<sup>12</sup> and repeatedly<sup>13</sup> violated Sections 73.49, 73.1125(a) and 73.1201(a)(2) of the Rules by failing to enclose its antenna structure within an effective locked fence or other enclosure, failing to maintain a main studio, and failing to transmit the station identification.

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<sup>7</sup> 47 C.F.R. § 73.1125(a).

<sup>8</sup> *Main Studio and Program Origination Rules*, Memorandum Opinion and Order, 3 FCC Rcd 5024, 5026 (1988).

<sup>9</sup> *Jones Eastern of the Outer Banks, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 3615, 3616 (1991), *clarified* 7 FCC Rcd 6800 (1992).

<sup>10</sup> 47 C.F.R. § 73.1201(a)(2).

<sup>11</sup> *See Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

<sup>12</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>13</sup> As provided by 47 U.S.C. § 312(f)(2), a continuous violation is “repeated” if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. *See* H.R. Rep. 97<sup>th</sup> Cong. 2d Sess. 51 (1982). *See Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

15. Finally, Perihelion requests to pay the forfeiture in six installments. However, Perihelion failed to provide the requested documentation and good faith payment for the installment payment plan. Accordingly, we can not grant the requested installment payment plan at this time.

16. We have examined Perihelion'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 Perihelion willfully and repeatedly violated Sections 73.49, 73.1125(a) and 73.1201(a)(2) of the Rules. We find no basis for cancellation or reduction of the \$15,000 forfeiture proposed for these violations.

#### IV. ORDERING CLAUSES

17. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Perihelion Global, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of fifteen thousand dollars (\$15,000) for violations of Sections 73.49, 73.1125(a) and 73.1201(a)(2) of the Rules.<sup>14</sup>

18. 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>15</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/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[s] 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. Perihelion will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

19. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Perihelion Global, Inc. at its address of record and to its counsel, Scott C. Cinnamon, 1250 Connecticut Ave. NW, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>14</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.49, 73.1125(a), 73.1201(a)(2).

<sup>15</sup> 47 U.S.C. § 504(a).