

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

In the Matter of)	
)	
Greeley Broadcasting Corporation)	File Number: EB-08-DV-0082
)	
Licensee of Station KGRE-AM)	NAL/Acct. No. 200832800005
Greeley, Colorado)	FRN: 0005078597
Facility ID # 33821)	

ORDER

Adopted: July 21, 2009

Released: July 23, 2009

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Order* (“*Order*”), we cancel a \$7,000 forfeiture proposed against Greeley Broadcasting Corporation (“Greeley”), licensee of station KGRE-AM in Greeley, Colorado, and admonish Greeley for violation of Section 73.49 of the Commission’s Rules (“Rules”).¹ On July 29, 2008, the Enforcement Bureau’s Denver Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of \$7,000 to Greeley for failing to enclose the KGRE-AM antenna tower within an effective locked fence or other enclosure.² Greeley filed a response (“*Response*”) on August 28, 2008. In this *Order*, we consider Greeley’s arguments that the violation was minor, was immediately corrected, was not repeated, and that the forfeiture amount should be reduced based on Greeley’s history of compliance with the Commission’s Rules, and its inability to pay the forfeiture.

II. BACKGROUND

2. On March 14, 2008, at 3:15 p.m., agents from the Enforcement Bureau's Denver Office conducted an inspection of an AM broadcast tower located at approximately 40° 26' 15" north latitude and 104° 43' 27" west longitude in Greeley, Colorado. Close observation revealed that the lock to the gate for the fenced enclosure was not engaged. The agents found the lock stuck in the open position and were unable to close it. As a result the agents were able to gain access to the structure, a series-fed antenna with an insulated base. The agents observed that there were residences within 250 yards of the tower and there was no perimeter fencing erected around the property to keep the public from approaching the structure. A search of the Commission's database on-scene indicated that KGRE-AM, licensed to Greeley Broadcasting, was broadcasting from the structure.

3. Upon completion of the site inspection the Denver agents traveled to the KGRE-AM main studio in Greeley, Colorado. When they arrived at the studio at approximately 4:20 p.m., an oral warning was issued regarding the base fencing violation to the staff member present. The staffer then contacted the president of Greeley Broadcasting by phone to talk with the agents. The agents conducted a telephone interview with the executive, again issuing an oral warning for the non-secured base fence. During the interview, the executive acknowledged that the condition of the lock was a serious safety issue and he agreed to remedy the situation immediately and to contact the agent as soon as the repairs were

¹ 47 C.F.R. § 73.49.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832800005 (Enf. Bur., Western Region, Denver Office, released July 29, 2008).

completed. Later that day, at approximately 6:15 p.m., the executive notified the Denver agents, by cellular telephone call, that the lock on the tower fence had been replaced.

4. On March 17, 2008, a Denver agent contacted the Greeley Broadcasting executive to obtain more information about recent access to the transmitter location. The executive admitted that he was unable to close the existing lock when he arrived at the transmitter site on March 14, 2008, to replace the device. When asked about recent site activity, the owner responded that he could not recall the date of his last visit to the site, but that he typically went there once a month to do work inside the building. On these occasions, he did not enter the fenced-in area around the tower base. Upon request, the owner provided the agent with the name of the engineers who had conducted work for the station on a contract basis.

5. On March 18, 2008, a Denver agent traveled to the KGRE-AM tower site and verified that the lock had been replaced with a functioning device.

6. On March 21, 2008, a Denver agent contacted all three engineers whose names had been provided by Greeley Broadcasting. Two of the engineers claimed they had not been to the site in three months or longer. The third engineer stated that he had been to the site approximately one week prior to the Denver agents' inspection on March 14, 2008. As with the two other contract engineers, this third engineer could not recall the last time he had entered the fenced enclosure.

7. On July 29, 2008, the Denver Office issued a *NAL* in the amount of \$7,000 to Greeley, finding that Greeley apparently willfully and repeatedly violated Section 73.49 of the Rules³ by failing to enclose the KGRE-AM antenna tower within an effective locked fence or other enclosure. In its *Response*, Greeley argues that the violation was minor in nature, that it was immediately corrected, that it was not repeated, and that the forfeiture amount should be reduced based on Greeley's history of compliance with the Rules, as well as its inability to pay the forfeiture.

III. DISCUSSION

8. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Rules,⁵ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("*Forfeiture Policy Statement*").⁶ In examining Greeley'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.⁷

9. 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.⁸ Individual tower fences need not be installed if the towers are contained within a protective property fence.⁹ In adopting the *Report and Order* promulgating the most recent

³ 47 C.F.R. § 73.49.

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

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

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ 47 C.F.R. § 73.49.

⁹ 47 C.F.R. § 73.49.

amendment of Section 73.49, the Commission stated that “a fencing requirement is necessary to protect the general public.”¹⁰ KGRE-AM broadcasts from a series-fed tower with an insulated base and, pursuant to Section 73.49, must be enclosed with an effective locked fence or other enclosure. The KGRE-AM tower is located adjacent to residential development and there is no other perimeter fencing to keep the public from approaching the structure. With no perimeter fence, the base fence around the individual AM tower must be effective.¹¹ At the time of the March 14, 2008, inspection, the lock to the gated, fenced enclosure surrounding the KGRE-AM tower was found stuck in the unlocked position and the agents were unable to close it. An executive of Greeley Broadcasting admitted to experiencing the same difficulty when he inspected the lock later that day. With no working lock on the gate, the agents were able to easily access the base of the KGRE-AM tower, therefore, the fence surrounding the KGRE-AM tower was ineffective. Interviews conducted by the Denver agents indicated that no station employee or contractor had been to the KGRE-AM tower site for at least a week prior to the Denver agents' inspection, and of those that had visited KGRE-AM tower site in the last few months, none acknowledged checking the lock or the gate at the site.¹²

10. In its *Response*, Greeley does not dispute that, at the time of the March 14, 2008, inspection, the KGRE-AM tower fence gate was unlocked and could not be closed. Greeley argues, however, that the open and unlocked gate was a minor violation of Section 73.49 of the Rules, when compared to other violations of Section 73.49 where an AM tower was enclosed by no fence at all,¹³ or the fence was a wooden structure with missing boards and in generally poor condition.¹⁴ Greeley also argues that as soon as it learned of the unlocked gate, it took immediate steps to rectify the problem. Further, Greeley argues that there is no evidence that the violation was repeated or that it occurred for more than a three hour period.¹⁵ Finally, Greeley argues it has an overall history of compliance with the Commission's Rules, having operated KRGE-AM for eleven years with no other violations.

11. We disagree with Greeley that the violation was minor. As noted above, the harm that Section 73.49 was enacted to prevent is access by the general public to antenna towers with radio frequency potential at the base. With a tower easily accessible from a residential area, such as the KGRE-AM tower, a locked gate is imperative to ensure protection from that type of harm. However, we agree with Greeley that the evidence does not conclusively demonstrate that the duration of the violation was more than three hours in length. Given this fact, along with Greeley's history of compliance with the Rules, we find that the circumstances surrounding and the nature and the extent of Greeley's violation justifies cancellation of the *NAL*.¹⁶ However, we admonish Greeley for its violation of Section 73.49 of

¹⁰ *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*”).

¹¹ See *Butterfield Broadcasting Corporation*, 20 FCC Rcd 20237 (EB 2005).

¹² In its *Response*, Greeley notes that KGRE-AM “voluntarily participates in the FCC's self inspection program and passed its most recent inspection in 2007.” We note that the Denver Office's investigation was limited to the tower safety issues raised by the unlocked fence gate, and that nothing in the *NAL* concerned any other alleged violations by Greeley of the Commission's Rules.

¹³ *Albino Ortega and Maria Juarez*, 22 FCC Rcd 8515 (EB 2007).

¹⁴ *Radio Plus, Inc.*, 23 FCC Rcd 10334 (EB 2008).

¹⁵ Greeley was notified of the violation by the Denver agents at 3:15 p.m. on March 14, 2008, and reported back to the agents by 6:15 p.m. that day that a new lock had been installed.

¹⁶ See *Anastos Media Group, Inc.* 18 FCC Rcd 8573 (EB 2003); *Kaspar Broadcasting Company*, 19 FCC Rcd 4719 (EB 2004).

the Rules.¹⁷

IV. ORDERING CLAUSES

12. **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, that the proposed forfeiture in the amount of seven thousand dollars (\$7,000) issued to Greeley Broadcasting Corporation, in the July 29, 2008, Notice of Apparent Liability for willful and repeated violations of Section 73.49 of the Rules **IS CANCELLED**.¹⁸

13. **IT IS FURTHER ORDERED** that Greeley Broadcasting Corporation, **IS ADMONISHED** for its violation of Section 73.49 of the Rules.¹⁹

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 Greeley Broadcasting Corporation, at its address of record, and its counsel of record, A. Wray Fitch III, Esquire.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

¹⁷ Because we are cancelling the *NAL*, we do not reach Greeley’s argument that it is unable to pay the proposed forfeiture.

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

¹⁹ 47 C.F.R. § 73.49.