

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

In the Matter of	)	
	)	
Stone/Collins Communications, Inc.	)	File No. EB-09-AT-0018
	)	
Licensee of Radio Station	)	NAL/Acct. No. 201032480001
WEPG (AM)	)	
South Pittsburg, TN	)	FRN 0004986998
Facility ID #40154	)	
	)	

**FORFEITURE ORDER**

**Adopted:** October 25, 2010

**Released:** October 27, 2010

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 three thousand five hundred dollars (\$3,500) to Stone/Collins Communications, Inc. (“Stone/Collins”), licensee of station WEPG(AM), in South Pittsburg, Tennessee, 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 Stone/Collins’ failure to: (1) enclose the base of its AM antenna structure within an effective locked fence; and (2) maintain and make available a public inspection file at its main studio.

**II. BACKGROUND**

2. On August 19, 2009, agents of the Enforcement Bureau’s Atlanta Office (“Atlanta Office”) accompanied by the station owner and other station personnel, inspected the main studio of radio station WEPG(AM). The agents asked to inspect the station’s public inspection file and were told by the station owner and personnel that there was no public inspection file and that the station never had one. Furthermore, the station personnel were not familiar with the public inspection file requirements.

3. The agents also inspected the fence surrounding the station’s antenna structure. The agents observed that the station’s antenna tower was energized during operating hours and therefore had radiofrequency potential at its base. The agents observed that the gate on the chain link fence surrounding the base of the tower was wide open. There was no lock to secure the gate, and there was no evidence of any prior lock on the gate. The agents also observed dense overgrowth of weeds and bushes inside the fence and in front of the opened gate. Moreover, the agents did not observe any perimeter property fence.

3. On January 11, 2010, the Atlanta Office issued a *Notice of Apparent Liability for Forfeiture* to Stone/Collins in the amount of seventeen thousand dollars (\$17,000), for the apparent willful and repeated violation of Sections 73.49 and 73.3526 of the Rules.<sup>2</sup> Stone/Collins submitted a

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

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 201032480001 (Enf. Bur., Atlanta Office, rel. January 11, 2010) (“*NAL*”).

response to the *NAL* requesting reduction or cancellation of the proposed forfeiture based on its inability to pay. Stone/Collins does not dispute the violations identified in the *NAL*.

### III. DISCUSSION

4. The proposed forfeiture amount 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*.<sup>5</sup> In examining Stone/Collins’ 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>6</sup> As discussed below, we conclude that the forfeiture should be reduced to \$3,500 based on Stone/Collins’ documented inability to pay the proposed forfeiture.

5. Section 73.49 of the Rules states that “antenna towers having radio frequency potential at the base... must be enclosed within effective locked fences or other enclosures.”<sup>7</sup> WEPG(AM)’s tower was energized during operating hours and therefore had radio frequency potential at its base. On August 19, 2009, agents from the Atlanta Office observed that the gate on the chain link fence surrounding the base of the tower was wide open. There was no lock to secure the gate, and no evidence of any prior lock on the gate. In addition, the agents did not observe a fence around the perimeter of the property. Section 73.49 of the Rules also states that, “[r]eady access must be provided to each antenna tower base for meter reading and maintenance purposes at all times.”<sup>8</sup> The agents observed on August 19, 2009, however, that there was dense overgrowth of weeds and bushes all around the base of the tower, and inside the fence, restricting access to the tower. Thus, based on the evidence before us, we find that Stone/Collins willfully<sup>9</sup> and repeatedly<sup>10</sup> violated Section 73.49 of the Rules by failing to maintain an effective locked fence or other enclosure at the base of the station’s antenna tower.

6. Section 73.3526 of the Rules states that “every permittee or licensee of an AM, FM, TV or Class A TV station in the commercial broadcast services shall maintain a public inspection file.”<sup>11</sup> The public

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<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> 47 C.F.R. § 1.80.

<sup>5</sup> *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (“*Forfeiture Policy Statement*”), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>6</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>7</sup> 47 C.F.R. § 73.49.

<sup>8</sup> *Id.*

<sup>9</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’, when used with reference to the commission or omission of any act, 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, 4388 ¶ 5 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

<sup>10</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 at 4388; *Western Wireless Corporation*, 18 FCC Rcd 10319, 10328 n.56 (2003).

<sup>11</sup> 47 C.F.R. § 73.3526.

inspection file shall be maintained at the main studio of the station and shall be available for public inspection at any time during regular business hours.<sup>12</sup> On August 19, 2009, agents from the Atlanta Office asked to inspect the station's public inspection file at its main studio during regular business hours. Station personnel stated that there was no public inspection file and that the station had never had one. No one at the station, including the owner, was able to provide any evidence that a public inspection file had ever existed. Thus, based on the evidence before us, we find that Stone/Collins willfully and repeatedly violated Section 73.3526 of the Rules by failing to maintain a public inspection file. We also find that Stone/Collins willfully violated Section 73.3536 of the Rules by failing to make available a public inspection file.

6. In its response to the *NAL*, Stone/Collins does not dispute that it violated the rules identified above. Stone/Collins instead describes the steps it took to correct the violations. The Commission has long held, however, that post-inspection corrective action taken to come into compliance with the Rules is expected, and such corrective action does not nullify or mitigate any prior forfeitures or violations.<sup>13</sup> Stone/Collins also asserts that it did not intend to violate the rules, and, in the case of the public inspection file rules, was unaware of the requirements. A violation, however, may be "willful" if it is conscious and deliberate, irrespective of any intent to violate the rules.<sup>14</sup> Finally, Stone/Collins requests reduction or cancellation of the proposed forfeiture, because it asserts the forfeiture amount would pose a financial hardship. It submits its three most recent years of tax returns to substantiate its claim. With regard to an individual's or entity's inability to pay, the Commission has determined that, in general, gross revenues are the best indicator of an ability to pay a forfeiture.<sup>15</sup> We have reviewed Stone/Collins' documentation and conclude that a reduction of the proposed forfeiture is warranted. Accordingly, pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*, we reduce the forfeiture to \$3,500, based on Stone/Collins' inability to pay the proposed forfeiture.

#### IV. ORDERING CLAUSES

7. 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, Stone/Collins Communications, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand five hundred dollars (\$3,500) for violations of Sections 73.49 and 73.3526 of the Rules.<sup>16</sup>

8. 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>17</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*

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<sup>12</sup> 47 C.F.R. §§ 73.3526(b)(1), 73.3526(c).

<sup>13</sup> See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994), *International Broadcasting Corporation*, Order on Review, 25 FCC Rcd 1538 (2010), *Rama Communications, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 4981 (Enf. Bur. 2009), *Bethune-Cookman College, Inc.*, Forfeiture Order, 24 FCC Rcd 4513 (South Central Region 2009).

<sup>14</sup> See *supra* note 9.

<sup>15</sup> See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

<sup>16</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.49, 73.3526.

<sup>17</sup> 47 U.S.C. § 504(a).

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. Stone/Collins shall also send electronic notification to SCR-Response@fcc.gov on the date said payment is made.

9. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Stone/Collins at its address of record and to its counsel, Larry D. Perry, 11464 Saga Lane, Knoxville, TN 37931-2819.

FEDERAL COMMUNICATIONS COMMISSION

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