

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

In the Matter of)	
)	
Spirit of Alaska Broadcasting, Inc.)	File Number: EB-08-AN-0111
)	
Permittee of Broadcast Station KMBQ(AM))	NAL/Acct. No.: 200932780001
Wasilla, Alaska)	FRN: 0004973970
Facility ID No.161023)	

ORDER

Adopted: July 25, 2011

Released: July 27, 2011

By the Regional Director, Western Region, Enforcement Bureau:

1. In this Order, which follows upon a Notice of Apparent Liability for Forfeiture (“NAL”) issued by the Enforcement Bureau’s Anchorage Office on April 30, 2009,¹ we determine that no forfeiture penalties should be imposed on Spirit of Alaska Broadcasting, Inc. (“Spirit”).

2. In the *NAL*, we found Spirit, permittee of AM broadcast Station KMBQ(AM), in Wasilla, Alaska, apparently liable for a forfeiture of \$7,000 for violation of section 73.49 of the Commission’s rules (“Rules”)² for failing to maintain an effective fence or enclosure around the Station KMBQ(AM) antenna structure.³ Consistent with section 503(b)(4) of the Communications Act of 1934, as amended,⁴ Spirit was granted an opportunity to show, in writing, why no such forfeiture should be imposed.

3. In its *Response*,⁵ Spirit asserts that the temporary fence enclosing the Station KMBQ(AM) antenna structure was effective within the meaning of section 73.49 of the Rules. Spirit states that when the station began operation in December 2008,⁶ there was three feet of snow on the ground, the daytime high temperatures ranged from -2 to -8 degrees Fahrenheit, with wind gusts up to 50 miles per hour, and the overnight lows were -20 degrees Fahrenheit.⁷ Spirit states that notwithstanding the frigid weather conditions, it constructed other effective enclosures and took other measures that protected the general public from the radio frequency potential at the base of the antenna. Specifically, Spirit describes that it erected fences of both black plastic sheeting and flexible orange plastic snow

¹ *Spirit of Alaska Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200932780001 (Enf. Bur., Western Region, Anchorage Resident Agent Office, rel. April 30, 2009).

² 47 C.F.R. § 73.49.

³ On February 5, 2009, in response to a complaint, at approximately 10:00 a.m. AST, agents from the Enforcement Bureau’s Anchorage Resident Agent Office (“Anchorage Office”), accompanied by the President of Spirit, conducted an inspection of the Station KMBQ(AM) transmitter and antenna site, located at 6362 East Chinook Avenue, Wasilla, Alaska. The inspection revealed that Spirit had installed a plastic snow fence enclosing the base of the Station KMBQ(AM) antenna structure.

⁴ 47 U.S.C. § 503(b)(4).

⁵ Response of Spirit Broadcasting, Inc., filed June 1, 2009 (“*Response*”).

⁶ Spirit also notes that multiple efforts were made by its neighbors at the transmitter site to stop the construction and operation of the transmitter, and that these efforts delayed Spirit from erecting a permanent fence. *Response* at 1–4.

⁷ *Response* at 2.

fencing, put orange and red markers around the plastic fencing, put five “No Trespassing” signs on the plastic fencing, installed additional non-ionizing radiation signs on the plastic fencing and on the transmitter building and the radiator block, and that it anchored the signage and sheeting with additional concrete blocks.⁸ Spirit states that it also maintained a regular physical presence at the site on the actual six-acre parcel owned by Spirit’s President pending construction of the permanent base fence, along with placing additional no trespassing signs around the perimeter of the property. Spirit states that once the weather conditions permitted, it completed construction of a permanent chain-link locked fence around the AM antenna structure during the first week in April 2009.⁹

4. On July 26, 2010, the United States District Court for the District of Alaska issued an Order that placed the assets of Spirit in receivership, assigned a receiver and ordered the receiver to “promptly apply to the Federal Communications Commission (FCC) for an involuntary assignment of licenses and transfer of control of radio stations operated by [Spirit].”¹⁰ On July 30, 2010, the court-appointed receiver filed an FCC Form 316 for involuntary transfer of control of Spirit from Spirit’s President to the court-appointed receiver consistent with the *U.S. District Court Order*. The Commission granted the application on August 19, 2010.¹¹

5. Upon review of the record in this case, we find that no forfeiture should be imposed. The good faith compliance measures described above, the unusual circumstances preventing construction, and the appointment of a receiver are all relevant to our consideration of any forfeiture, and in this case to our determination to impose no forfeiture penalty.¹²

6. **ACCORDINGLY, IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Commission’s rules, the proposed forfeiture issued to Spirit of Alaska Broadcasting, Inc., in the above captioned proceeding **WILL NOT BE IMPOSED**.¹³

⁸ *Response* at 2.

⁹ *Response* at 1-4. We note that on April 22, 2009, an Anchorage agent again inspected the Station KMBQ(AM) transmitter and antenna site and found that the antenna structure was surrounded by a substantial six foot high chain link metal fence which fully enclosed the structure.

¹⁰ *Gladstone Capital Corporation v. Spirit of Alaska Broadcasting, Inc.*, Order, No. 3:10-cv-0146-HRH (D. Alaska July 26, 2010) (“*U.S. District Court Order*”).

¹¹ *See* File No. BTC-20100730ACU, granted August 19, 2010.

¹² *See, e.g., Diamond Broadcasting of California, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 7388 (1996) (rescinding a \$25,000 forfeiture issued against a licensee in receivership); *David Ryder, Receiver*, Order, 23 FCC Rcd 10499 (Enf. Bur., South Central Region 2008) (rescinding a \$12,000 forfeiture proposed against an entity that had been turned over to a receiver); *Multimedia Development Corp.*, Memorandum Opinion and Order, 17 FCC Rcd 22649 (WTB, Public Safety & Private Wireless Div. 2002) (rescinding four proposed forfeitures totaling \$80,000 where receiver replaced offending licensee and forfeiture would harm innocent creditors). Appointment of a receiver should not necessarily prevent all forfeiture liability. The Commission may, however, consider such circumstances as a mitigating factor in any forfeiture determination, including circumstances such as those here, where the receiver was not involved in the apparent violation of section 73.49 and was appointed to operate the station for the benefit of the creditors. *See, e.g., David Ryder, Receiver*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 6371 (Media Bur. 2006) (proposing \$1,500 forfeiture against station in receivership but noting appointment of receiver as mitigating factor) (subsequent history omitted). As noted above, the overall facts of this case, including both the receivership and the licensee’s good-faith compliance measures taken prior to FCC inspection, justify the outcome here.

¹³ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4).

7. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent both by First Class Mail and Certified Mail Return Receipt Requested to Spirit of Alaska Broadcasting, Inc., at 2200 East Parks Highway, Wasilla, Alaska, 99654.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau