

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

In the Matter of	)	
	)	
Equity Communications LP	)	File No.: EB-10-PA-0312
	)	
Licensee of Station WMID and	)	NAL/Acct. No.: 201232400001
Owner of Antenna Structure Number 1046225	)	
	)	FRN: 0003747813
Atlantic City, New Jersey	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: October 27, 2011

Released: October 31, 2011

By the District Director, Philadelphia Office, Northeast Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Equity Communications LP (“Equity”), licensee of AM Station WMID and owner of antenna structure number 1046225 (the “Antenna Structure”), in Atlantic City, New Jersey, apparently willfully and repeatedly violated section 303(q) of the Communications Act of 1934, as amended (“Act”)<sup>1</sup> and sections 17.50(a) and 73.49 of the Commission’s rules (“Rules”),<sup>2</sup> by failing to repaint the Antenna Structure as often as necessary to maintain good visibility and failing to enclose the Antenna Structure within an effective locked fence or enclosure. We conclude that Equity is apparently liable for a forfeiture in the amount of twenty thousand dollars (\$20,000).

**II. BACKGROUND**

2. On March 5, 2010, agents from the Enforcement Bureau’s Philadelphia Office (“Philadelphia Office”) inspected the Antenna Structure located in Atlantic City, New Jersey. According to the Antenna Structure Registration (“ASR”) database, the Antenna Structure was required to be painted and lit.<sup>3</sup> The agents observed that the paint on the Antenna Structure was faded and chipped, significantly reducing the Antenna Structure’s visibility. The agents also found that an unlocked gate on the southeast side of the Antenna Structure allowed unrestricted access to its base.<sup>4</sup> The agents contacted the Antenna Structure owner and locked the gate before leaving the site.

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<sup>1</sup> 47 U.S.C. § 303(q).

<sup>2</sup> 47 U.S.C. §§ 17.50(a), 73.49.

<sup>3</sup> Pursuant to section 17.21 of the Rules, antenna structures shall be painted and lit when they exceed 60.96 meters in height above ground. 47 C.F.R. § 17.21. Antenna structure number 1046625 is 106 meters in height above ground.

<sup>4</sup> Section 73.49 of the Rules states that “antenna towers having radio frequency potential at the base must be enclosed with effective locked fences or other enclosures.” 47 C.F.R. § 73.49. The fence surrounding the Antenna Structure has two gates for access. One gate is on the southeast side and the other gate in on the northeast side. The gate that was found unlocked on March 5, 2010 was the gate on the southeast side and agents observed the lock hanging on the fence.

3. On April 7, 2010, the Philadelphia Office issued a *Notice of Violation* (“*NOV*”) to Equity for failing to clean and repaint the Antenna Structure as required to maintain good visibility, in violation of section 17.50(a) of the Rules, and for failing to enclose the Antenna Structure within an effective locked fence, in violation of section 73.49 of the Rules.<sup>5</sup>

4. On May 6, 2010, the Philadelphia Office received Equity’s response to the *NOV*.<sup>6</sup> In the letter, Equity stated that it inspects the Antenna Structure several times per year and had been planning to address the faded and chipped paint issue for some time.<sup>7</sup> Equity further stated that the Antenna Structure would be brought into compliance with the Rules by August 15, 2010.<sup>8</sup> Equity also stated that, during its own site visits, it had never seen the Antenna Structure’s gate left unlocked. Finally, Equity stated that several tenants lease space on the Antenna Structure and each of them has a key for the locks.<sup>9</sup>

5. On November 16, 2010, agents from the Philadelphia Office re-inspected the Antenna Structure to verify that the violations from the *NOV* had been corrected. The agents found that Equity had neither repainted the Antenna Structure nor installed strobe lights. The agents also found the gate on the northeast side of the Antenna Structure was unlocked, allowing unrestricted access to the Antenna Structure, which had radio frequency potential at its base. The agents immediately informed Equity’s President and General Manager about the open gate. The next day, the agents returned to the Antenna Structure site and found that the gate on the northeast side of the Antenna Structure was still unlocked.

6. On December 8, 2010, agents from the Philadelphia Office again inspected the Antenna Structure with Equity’s President and General Manager and Station WMID’s Chief Engineer. The Antenna Structure still had not been repainted nor were strobe lights installed. The agent used the Federal Aviation Administration’s (“FAA”) In-Service Aviation Orange Tolerance Chart (“Tolerance Chart”)<sup>10</sup> to compare the paint on the Antenna Structure with the standard in the Tolerance Chart. The paint on the Antenna Structure failed the Tolerance Chart test.

7. On January 7, 2011, Station WMID’s Chief Engineer notified the agent via e-mail that Equity had installed strobe lights and that the Antenna Structure’s lighting system was fully operational.<sup>11</sup>

### III. DISCUSSION

8. Section 503(b) Act,<sup>12</sup> provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any

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<sup>5</sup> See *Equity Communications LP*, Notice of Violation, V201032400035 (rel. April 7, 2010); see also 47 C.F.R. §§ 17.50, 73.49.

<sup>6</sup> See Letter from Gary Fisher, President, Equity Communications LP, to Gene Stanbro, District Director, Philadelphia Office, dated May 6, 2010 (“*NOV Response*”).

<sup>7</sup> *NOV Response* at 1.

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

<sup>9</sup> *Id.* at 2.

<sup>10</sup> The Color Tolerance Charts from the FAA provide a method for visually comparing the paint on the tower against the chart colors, which reflect the FAA’s paint color specifications. These Color Tolerance Charts are based on the recommendations contained in National Bureau of Standards Report NBSIR 75-663, COLOR REQUIREMENTS FOR THE MARKING OF OBSTRUCTIONS, by R.L. Booker.

<sup>11</sup> The agent later confirmed that Equity had obtained a modified FAA No Hazard Determination allowing it to use white strobe lighting in lieu of paint.

<sup>12</sup> 47 U.S.C. § 503(b).

of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. Section 312(f)(1) of the Act defines willful as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.<sup>13</sup> The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both section 312 and 503(b) of the Act<sup>14</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>15</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>16</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>17</sup>

#### **A. Failure to Clean or Repaint the Antenna Structure**

9. Section 303(q) of the Act states that antenna structure owners shall maintain the painting and lighting of antenna structures as prescribed by the Commission.<sup>18</sup> Section 17.50(a) of the Rules requires that antenna structures requiring painting shall be cleaned or repainted as often as necessary to maintain good visibility.<sup>19</sup> On March 5, 2010, FCC agents observed that the paint on the Antenna Structure was severely faded and chipped and immediately notified Equity of the structure’s condition. In response to the NOV issued on April 7, 2010, Equity admitted that the Antenna Structure needed to be repainted, but Equity still had not repainted the Antenna Structure when agents re-inspected on November 16, 2010 and December 8, 2010. Because Equity failed to paint the Antenna Structure as required by the rules, we find that the violation was willful. Because the violation occurred over several months, we find that the violation was repeated. Accordingly, we find that Equity apparently willfully and repeatedly violated section 17.50 of the Rules by failing to clean or repaint Antenna Structure in order to maintain good visibility.

#### **B. Failure to Enclose the Antenna Structure Within an Effective Locked Fence**

10. Section 73.49 of the Rules states that “antenna towers having radio frequency potential at the base must be enclosed with effective locked fences or other enclosures.”<sup>20</sup> On March 5, 2010, agents found that the gate on the southeast side of the Antenna Structure was left unlocked and provided access to the Antenna Structure, which had radio frequency potential at its base. On November 16, 2010, agents found that the gate on the northeast side of the Antenna Structure was open and allowed unrestricted access to the base of the Antenna Structure, resulting in another warning from FCC agents. On November 17,

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<sup>13</sup> 47 U.S.C. § 312(f)(1).

<sup>14</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982) (“This provision [inserted in section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the [A]ct (e.g., section 503)... As defined ... ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission’s application of those terms ...”).

<sup>15</sup> See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) (“*Southern California Broadcasting Co.*”), *recon. denied*, 7 FCC Rcd 3454 (1992).

<sup>16</sup> See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

<sup>17</sup> 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.”

<sup>18</sup> 47 U.S.C. § 303(q).

<sup>19</sup> 47 C.F.R. § 17.50.

<sup>20</sup> 47 C.F.R. § 73.49.

2010, agents found that the gate on the northeast side of the Antenna Structure was still open. Based on the evidence before us, we find that Equity apparently willfully and repeatedly violated section 73.49 of the Rules by failing to enclose the antenna structure with an effective locked fence or enclosure.

### C. Proposed Forfeiture

11. Pursuant to the Commission's *Forfeiture Policy Statement*, and section 1.80 of the Rules, the base forfeiture amount for failing to comply with prescribed lighting and marking is \$10,000 and the base forfeiture amount for failure to maintain an effective AM tower fence is \$7,000.<sup>21</sup> In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, 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>22</sup> Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that an upward adjustment is warranted. Despite repeated warnings regarding the Antenna Structure's faded paint and the unlocked gates, the apparent violations continued, demonstrating a deliberate disregard for the Rules. We therefore conclude that Equity is apparently liable for a forfeiture in the amount of \$20,000.

## IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.311, 0.314 and 1.80 of the Commission's rules, Equity Communications LP is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for violation of sections 17.50(a) and 73.49 of the Rules.<sup>23</sup>

13. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Equity Communications LP **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture must be made by credit card through the Commission's Revenue and Receivables Operations Group at (202) 418-1995, or by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN 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 Federal Reserve Bank of New York, and account number 27000001. 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.<sup>24</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov). Equity shall also send electronic notification on the date said payment is made to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov).

<sup>21</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); 47 C.F.R. § 1.80.

<sup>22</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>23</sup> 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 17.50(a), 73.49.

<sup>24</sup> See 47 C.F.R. § 1.1914.

15. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Rules.<sup>25</sup> Mail the written statement to Federal Communications Commission, Enforcement Bureau, Northeast Region, Philadelphia Office, One Oxford Valley Building, Suite 404, 2300 East Lincoln Highway, Langhorne, Pennsylvania 19047 and include the NAL/Acct. No. referenced in the caption. Equity Communications LP also shall email the written response to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov)

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to Equity Communications LP at 8025 Black Horse Pike, Suite 100-102, West Atlantic City, New Jersey 08232.

FEDERAL COMMUNICATIONS COMMISSION

Gene Stanbro  
District Director  
Philadelphia Office  
Northeast Region  
Enforcement Bureau

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<sup>25</sup> See 47 C.F.R. §§ 1.16, 1.80(f)(3).