

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

In the Matter of	)
	)
Patrick H. Sickafus	) File No.: EB-10-PA-0135
Licensee of AM Station WWSM	)
Annville-Cleona, Pennsylvania	) NAL/Acct. No.: 201132400007
Facility ID No. 54343	)
	) FRN: 0003779840

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted:** May 16, 2011**Released:** May 17, 2011

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

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that Patrick H. Sickafus (“Sickafus”), licensee of AM Station WWSM in Annville-Cleona, Pennsylvania, apparently willfully and repeatedly violated section 73.49 of the Commission’s rules (“Rules”)<sup>1</sup> by failing to enclose two of Station WWSM’s antenna towers within effective locked fences or other enclosures. We conclude that Sickafus is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000).

**II. BACKGROUND**

2. On May 26, 2010, an agent of the Enforcement Bureau’s Philadelphia Office (“Philadelphia Office”) inspected the series-fed, three-tower array used in the operation of Station WWSM in Annville-Cleona, Pennsylvania. The agent found that the wooden gate to the center antenna structure was off its hinges and open. The agent also observed that the door to the center tower’s tuning hut was unlocked and open, which allowed unhindered access to the live tuning coils feeding the center tower. Similarly, the agent found that the enclosure for the antenna structure located at the northern part of the site was missing the entire southside wall and the door to the tuning hut was unlocked. The agent concluded that the enclosures around the center tower and the northern tower were in such a state of disrepair that it could not have happened overnight.<sup>2</sup>

3. Immediately after the inspection, the agent attempted to contact the station’s general manager, but was not able to reach him until June 1, 2010, at which time the agent advised the general manager about the problems at the antenna site.<sup>3</sup> The general manager told the agent that he had visited the antenna site on May 24, 2010, and had observed the same problems as the agent. In an e-mail later that day, the general manager reported that the fence enclosures would be fixed that week and he admitted

---

<sup>1</sup> 47 C.F.R. § 73.49.

<sup>2</sup> The third antenna structure at the southern end of the site was properly enclosed.

<sup>3</sup> On May 26, 2010, the agent called Station WWSM’s main studio; no one answered the phone and there was no voice mail. The next day, the agent tried to call the station’s main studio and sent messages to two e-mail addresses the agent had obtained for Station WWSM; again, no answer at the station’s main studio and no response to the e-mails. The general manager finally answered the phone at the main studio on June 1, 2010.

that he had not been maintaining the antenna site properly. On June 2, 2010, the general manager sent another e-mail to the agent advising him that the fence enclosures had been repaired. The agent confirmed that the enclosures were fixed during an on-scene inspection on June 7, 2010.

### III. DISCUSSION

4. Section 503(b) of the Communications Act of 1934, as amended (“Act”), 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 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.<sup>4</sup> The term “willful” as used in section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>5</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>6</sup>

5. 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.<sup>7</sup> The agent’s inspection of Station WWSM’s series-fed three-tower array on May 26, 2010, revealed that two of the three towers were not enclosed within an effectively locked fence or other enclosure. Although the station’s general manager acknowledged that he had been at the site two days prior to the inspection and observed the same problems observed by the agent, the enclosures were not repaired until the day after the agent notified the general manager about the problem. The general manager also admitted that he had not been properly maintaining the antenna site. Based on the evidence before us, we find that Sickafus apparently willfully and repeatedly violated section 73.49 of the Rules by failing to maintain two of Station WWSM’s antenna towers within effective locked fences or other enclosures.

6. Pursuant to the Commission’s *Forfeiture Policy Statement* and section 1.80 of the Rules, the base amount for failure to maintain an effective AM tower fence is \$7,000.<sup>8</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, and history of prior offenses, ability to pay, and other such matters as justice may require.<sup>9</sup> Applying the *Forfeiture Policy Statement*, section 1.80, and the statutory factors to the instant case, we conclude Sickafus is apparently liable for a forfeiture in the amount of \$7,000.

---

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</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 (1991).

<sup>6</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>7</sup> 47 C.F.R. § 73.49.

<sup>8</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>9</sup> 47 U.S.C. § 503(b)(2)(E).

#### 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 of the Commission's Rules, Patrick H. Sickafus is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seven thousand dollars (\$7,000) for violation of section 73.49 of the Rules.<sup>10</sup>

8. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Rules, within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Patrick H. Sickafus **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture must be made by credit card, 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 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.<sup>8</sup> If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov). If payment is made, Patrick H. Sickafus shall send electronic notification on the date said payment is made to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov).

10. 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. The written statement, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, Philadelphia District Office, One Oxford Valley Building, Suite 404, 2300 East Lincoln Highway Langhorne, Pennsylvania 19047 and must include the NAL/Acct. No. referenced in the caption. The statement should also be emailed to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov).

11. 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.

---

<sup>10</sup> 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80, 73.49.

<sup>8</sup> See 47 C.F.R. § 1.1914.

12. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Patrick H. Sickafus at Post Office Box 84, Strasstown, Pennsylvania 19559.

FEDERAL COMMUNICATIONS COMMISSION

Gene J. Stanbro  
District Director  
Philadelphia Office  
Northeast Region  
Enforcement Bureau