

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

In the Matter of	)	
	)	
Alaska Integrated Media, Inc.	)	File No.: EB-FIELDWR-12-00001355
	)	NAL/Acct. No.: 201232780002
Licensee of Station KOAN	)	FRN: 0020201240
Anchorage, Alaska	)	Facility ID No.: 53491
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER**

**Adopted: July 26, 2012**

**Released: July 27, 2012**

By the Resident Agent, Anchorage Office, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Alaska Integrated Media, Inc. (Alaska Integrated), licensee of AM Station KOAN (Station), in Anchorage, Alaska, apparently willfully and repeatedly violated Section 73.49 of the Commission's rules (Rules),<sup>1</sup> by failing to enclose the Station KOAN antenna tower (the Antenna Structure) within an effective locked fence or other enclosure. We conclude that Alaska Integrated is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000). In addition, we direct Alaska Integrated to submit, no later than thirty (30) calendar days from the date of this NAL, a statement signed under penalty of perjury stating that its Antenna Structure complies with the Commission's fencing requirements.

**II. BACKGROUND**

2. On March 8, 2012, and again on March 15, 2012, agents from the Enforcement Bureau's Anchorage Office (Anchorage Office) inspected Station KOAN's AM antenna tower site located in Knik, Alaska. The agents observed a wooden plank fence enclosing the base of the Antenna Structure. However, the agents also observed that several of the wood planks were missing, lying on the snow next to the bottom of the fence, and the missing planks allowed ready access to the base of the Antenna Structure. The agents further observed a residence within 500 feet and a public road within 300 feet of the Antenna Structure. In addition, no perimeter fence impeded access to the Antenna Structure site.

3. On March 22, 2012, the Anchorage agents visited the Station's main studio<sup>2</sup> and notified the Station's operations manager about the deficiencies in the fence. The operations manager told the agents that he was unaware that planks were missing from the fence but stated that he would have someone go out and assess the situation.

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<sup>1</sup> 47 C.F.R. § 73.49.

<sup>2</sup> The main studio is located approximately 21.5 miles from the Station KOAN AM tower structure.

### 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>3</sup> 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>4</sup> The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,<sup>5</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>6</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>7</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>8</sup>

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

5. Section 73.49 of the Rules states that “[a]ntenna towers having radio frequency at the base . . . must be enclosed within effective locked fences or other enclosures.”<sup>9</sup> Individual tower fences need not be installed if the towers are contained within a protective property fence.<sup>10</sup> In adopting the *Report and Order* promulgating the most recent amendment of Section 73.49, the Commission stated that “a fencing requirement is necessary to protect the general public.”<sup>11</sup> On March 8, 2012, and again on March 15, 2012, Anchorage agents observed that wood planks were missing from the fence enclosing the base of the Station’s Antenna Structure, thereby allowing access to its base. In addition, the agents did not observe a perimeter fence surrounding the property. Based on the evidence before us, we find that Alaska Integrated apparently willfully and repeatedly violated section 73.49 of the Rules by failing to enclose the Station’s Antenna Structure within an effective locked fence or other enclosure.

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<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> 47 U.S.C. § 312(f)(1).

<sup>5</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 act (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>6</sup> See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

<sup>7</sup> See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

<sup>8</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.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

<sup>9</sup> 47 C.F.R. § 73.49.

<sup>10</sup> *Id.*

<sup>11</sup> *Review of the Technical and Operational Regulations of Part 73, Subpart A, AM Broadcast Stations*, Report and Order, 59 Rad. Reg. 2d (Pike & Fischer) 927, para. 6 (1986) (*Report and Order*).

## B. Proposed Forfeiture Amount and Reporting Requirement

6. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for failing to maintain effective AM tower fencing is \$7,000.<sup>12</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>13</sup> Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Alaska Integrated is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000).

7. We further order Alaska Integrated to submit a written statement, pursuant to Section 1.16 of the Rules,<sup>14</sup> signed under penalty of perjury by an officer or director of Alaska Integrated, stating that the Station complies with the Commission's fencing rules and that its antenna structure is enclosed within an effective locked fence or other enclosure. This statement must be provided to the Anchorage Resident Agent Office at the address listed in paragraph 10 within thirty (30) calendar days of the release date of this NAL.

## IV. ORDERING CLAUSES

8. 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 of the Commission's rules, Alaska Integrated Media, Inc. 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>15</sup>

9. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Alaska Integrated Media, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. **IT IS FURTHER ORDERED** that Alaska Integrated Media, Inc. **SHALL SUBMIT** a written statement, as described in paragraph 7, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order. The statement must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Anchorage Resident Agent Office, P.O. Box 231949, Anchorage, Alaska, 99523-1949. Alaska Integrated Media, Inc. shall also e-mail the written statement to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov).

11. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Alaska Integrated Media, Inc. will also send electronic notification on the date said payment is made to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov). Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>16</sup> When completing the FCC Form 159, enter the Account Number in block

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<sup>12</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*), recons. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

<sup>13</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>14</sup> 47 C.F.R. § 1.16.

<sup>15</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 73.49.

<sup>16</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

12. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>17</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

13. 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 1.16 and 1.80(f)(3) of the Rules.<sup>18</sup> Mail the written statement to Federal Communications Commission, Enforcement Bureau, Western Region, Anchorage Resident Agent Office, P.O. Box 231949, Anchorage, Alaska, 99523-1949 and include the NAL/Acct. No. referenced in the caption. Alaska Integrated Media, Inc. also shall email the written response to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov).

14. 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.

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<sup>17</sup> See 47 C.F.R. § 1.1914.

<sup>18</sup> 47 C.F.R. §§ 1.16, 1.80(f)(3).

15. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and First Class Mail to Alaska Integrated Media, Inc. at 4700 Business Park Boulevard, Suite 44-A, Anchorage, Alaska 99503.

FEDERAL COMMUNICATIONS COMMISSION

Marlene Windel  
Resident Agent  
Anchorage Resident Agent Office  
Western Region  
Enforcement Bureau