

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

In the Matter of)	
)	
Hye Cha Kim)	File No.: EB-11-AT-0001
)	NAL/Acct. No.: 201232480007
Licensee of Station WDGR(AM))	FRN: 0018897660
Dahlonega, GA)	Facility ID No.: 24459
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 1, 2012

Released: August 1, 2012

By the District Director, Atlanta Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Hye Cha Kim, licensee of Station WDGR(AM) in Dahlonega, Georgia (Station), apparently willfully and repeatedly violated Sections 73.49 and 73.1745 of the Commission's rules (Rules)¹ by failing to enclose the Station's antenna structure within an effective locked fence or other enclosure and failing to adhere to the terms of the Station's authorization. We conclude that Mrs. Kim is apparently liable for a forfeiture in the amount of eleven thousand dollars (\$11,000).

II. BACKGROUND

2. Station WDGR(AM) is licensed to operate during daytime hours with 10 kilowatt (kW) transmitter power, except during critical hours when the station must reduce power to 2.5 kW.² Thus, the Station must either discontinue transmitting at local sunset,³ or may operate for two hours past sunset with a reduced transmitter power of 1 watt in accordance with its post sunset authority.⁴

3. On January 5, 2012, and again on January 11, 2012, agents from the Enforcement Bureau's Atlanta Office (Atlanta Office) monitored the operations of Station WDGR(AM) and observed the Station operate for more than two hours past sunset on both days, until at least 8:30 p.m.⁵ The agents also observed that the Station did not reduce its transmitter power to 1 watt after sunset in accordance with its post sunset authority.

¹ 47 C.F.R. §§ 73.49 and 73.1745.

² See License File No. BL-19830715AA. Section 73.187 of the Rules defines "critical hours" as the two hours after local sunrise and the two hours before local sunset. 47 C.F.R. § 73.187.

³ In January 2012, local sunset time was 5:45 p.m. (EST).

⁴ See *Revised Parameters for Operation under Post-Sunset Authority* dated Feb. 28, 2007, associated with Licensed Facility BL-19830715AA.

⁵ On both days, the agents from the Atlanta Office observed that the Station stopped transmitting programming between 5:45 p.m. and 6:00 p.m., and 5:00 p.m. and 5:15 p.m., respectively, but continued to transmit the unmodulated carrier into the evening.

4. On January 5 and January 11, 2012, the agents also observed that a section of the fence surrounding the base of the Station's antenna structure was missing, allowing ready access to its base. The agents further noted that there was no fence around the perimeter of the property.

5. On January 17, 2012, an agent from the Atlanta Office, accompanied by the Station's chief operator,⁶ inspected Station WDGR(AM)'s main studio and antenna structure. The agent observed that a section of the fence was still missing. The chief operator stated that he knew the fence section was missing, but that it had been missing for "not a long time." The chief operator also stated to the agent that he was unaware that the Station had post sunset authority and of any nighttime operations by the Station. The chief operator further explained that his assistant must have made an error and forgot to shut the transmitter off.⁷

III. DISCUSSION

6. 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.⁸ 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.⁹ 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,¹⁰ and the Commission has so interpreted the term in the Section 503(b) context.¹¹ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹² The term "repeated" means the commission or omission of such act more than once or for more than one day.¹³

⁶ There was no designated chief operator at the Station, but the person stated that he was the Station's chief operator.

⁷ The Station did not have automatic transmitter control equipment and required manual adjustment of the transmitter at night. Non-remote control attended operation of transmission systems is permissible under the rules, provided the station operates within tolerances at all times. See 47 C.F.R. § 73.1400.

⁸ 47 U.S.C. § 503(b).

⁹ 47 U.S.C. § 312(f)(1).

¹⁰ H.R. Rep. No. 97-765, 97th 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").

¹¹ 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).

¹² 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).

¹³ 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.

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

7. Section 73.49 of the Rules states that “[a]ntenna towers having radio frequency potential at the base . . . must be enclosed within effective locked fences or other enclosures.”¹⁴ “Individual tower fences need not be installed if the towers are contained within a protective property fence.”¹⁵ Station WDGR(AM)’s antenna structure has radio frequency potential at its base and therefore must be enclosed within an effective locked fence. On January 5, January 11, and again on January 17, 2012, when the Station was in operation, agents from the Atlanta Office observed that a section of the fence surrounding the antenna structure was missing, thereby allowing ready access to the base. The agents also observed that there was no fence around the perimeter of the property. Based on the evidence before us, we find that Mrs. Kim 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.¹⁶

B. Failure to Adhere to the Terms of the Station Authorization

8. Section 73.1745 of the Rules states that “[n]o broadcast station shall operate at times, or with modes or power, other than those specified and made a part of the license, unless otherwise provided in this part.”¹⁷ Station WDGR(AM) has authority to operate two hours past sunset (until 7:45 p.m.) with a transmitter power of 1 watt. On January 5, and again on January 11, 2012, agents from the Atlanta Office observed Station WDGR(AM) operate after post sunset hours (until at least 8:30 p.m.) with more than 1 watt of transmitter power. Although the Station’s chief operator attributed the unauthorized operations to an employee mistake, Commission precedent has established that a violator can be held liable for violations resulting from employee mistakes.¹⁸ Based on the evidence before us, we find that Mrs. Kim apparently willfully and repeatedly violated Section 73.1745 of the Rules by operating the Station at times and with modes of power inconsistent with her station authorization.

C. Proposed Forfeiture Amount

9. Pursuant to the Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for an AM tower fencing violation is \$7,000 and for exceeding power limits is \$4,000.¹⁹ 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.²⁰ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mrs.

¹⁴ 47 C.F.R. § 73.49.

¹⁵ *Id.*

¹⁶ Station WDGR is currently silent. Thus, there is no longer radio frequency potential at the base or a potential safety hazard.

¹⁷ 47 C.F.R. § 73.1745.

¹⁸ See, e.g., *Tidewater Communications, LLC*, Order on Review, 25 FCC Rcd 1675 (2010), citing *North Country Repeaters*, Forfeiture Order, 19 FCC Rcd 22139 (Enf. Bur. 2004); *PBJ Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1988); and *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358 (1986).

¹⁹ *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.

²⁰ 47 U.S.C. § 503(b)(2)(E).

Kim is apparently liable for a total forfeiture in the amount of \$11,000, consisting of the following: \$7,000 for the antenna structure fencing violation and \$4,000 for operating her station overpower and at unauthorized times.

IV. ORDERING CLAUSES

10. 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, Hye Cha Kim is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of eleven thousand dollars (\$11,000) for violations of Sections 73.49 and 73.1745 of the Rules.²¹

11. **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, Hye Cha Kim **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. 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. Hye Cha Kim shall also send electronic notification on the date said payment is made to SCR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²² When completing the FCC Form 159, enter the Account Number in block 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.

13. 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. 20554.²³ If you have questions regarding payment procedures, please contact

²¹ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 73.49 and 73.1745.

²² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²³ See 47 C.F.R. § 1.1914.

the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

14. 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.²⁴ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Atlanta Office, 3575 Koger Blvd., Suite 320, Duluth, GA 30096 and include the NAL/Acct. No. referenced in the caption. Hye Cha Kim also shall email the written response to SCR-Response@fcc.gov.

15. 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.

16. **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 First Class Mail to Hye Cha Kim at P.O. Box 2964, Duluth, GA 30096, and to her attorney, Jeffrey L. Timmons, P.C., at 1110 Whitehawk Trail, Lawrenceville, GA 30043.

FEDERAL COMMUNICATIONS COMMISSION

Douglas G. Miller
District Director
Atlanta Office
South Central Region
Enforcement Bureau

²⁴ 47 C.F.R. §§ 1.16, 1.80(f)(3).