

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

In the Matter of	)	
	)	
Steckline Communications, Inc.	)	File No.: EB-FIELDSCR-12-00003982
	)	NAL/Acct. No.: 201332560005
Licensee of Station KIUL-AM	)	FRN: 0009951286
Garden City, KS	)	Facility ID No.: 67041
	)	
Owner of Antenna Structure No. 1033013	)	
Garden City, KS	)	

**FORFEITURE ORDER**

**Adopted: October 2, 2014**

**Released: October 2, 2014**

By the Regional Director, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. We impose a penalty of \$5,600 against Steckline Communications, Inc. (Steckline) for failing to maintain effective antenna structure fencing. The Commission's antenna structure fencing rules protect the public by limiting access to areas with a high potential for radiofrequency exposure. Steckline does not dispute that its fencing was in disrepair at the time of inspection, but it requests a forfeiture reduction asserting that the violations were not willful or repeated because the fencing purportedly was damaged by weather. For the reasons stated below, we find that the violations were willful and repeated, but reduce the forfeiture based on Steckline's prior good faith efforts to comply with the Commission's antenna structure fencing rules.

2. Specifically, we issue a monetary forfeiture to Steckline, licensee of Station KIUL-AM and owner of antenna structure number 1033013 (Antenna Structure), both located in Garden City, Kansas, for willful and repeated violation of Section 73.49 of the Commission's rules (Rules) by failing to enclose the Antenna Structure within an effective locked fence or other enclosure.<sup>1</sup>

**II. BACKGROUND**

3. On May 6, 2013, the Enforcement Bureau's Kansas City Office (Kansas City Office) issued a Notice of Apparent Liability for Forfeiture (NAL) to Steckline proposing a \$7,000 forfeiture against it for failure to enclose the Antenna Structure within an effective locked fence or other enclosure.<sup>2</sup> As detailed in the NAL, the Kansas City Office agent inspected the Antenna Structure on July 12, 2012, and observed a section of the fence surrounding the Antenna Structure lying on the ground while Station KIUL-AM was in operation.<sup>3</sup> Based on the condition of the fencing, the agent concluded that it had been in disrepair for some time.<sup>4</sup> Steckline stated that the Antenna Structure's fencing initially was damaged in

<sup>1</sup> 47 C.F.R. § 73.49.

<sup>2</sup> *Steckline Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 6174 (Enf. Bur. 2013) (NAL)

<sup>3</sup> *Id.* at 6174, para. 2.

<sup>4</sup> *See id.* at 6176, para. 5 (noting that the fencing "had weeds growing through it, which indicated that it had been in that condition for more than one day").

a storm on April 29, 2012, and that it made temporary repairs to the fencing the first week in May 2012.<sup>5</sup> In its *NAL Response*, Steckline requests reduction of the proposed forfeiture asserting that the violations were not “willful or repeated” because the fencing purportedly was damaged due to natural causes or “an act of God.”<sup>6</sup> Specifically, Steckline asserts that the temporary fencing repairs were damaged by two other wind storms eight days prior to the July 12<sup>th</sup> inspection.<sup>7</sup> Moreover, Steckline states that it promptly repaired the Antenna Structure’s fencing following the inspection.<sup>8</sup>

### III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),<sup>9</sup> Section 1.80 of the Rules,<sup>10</sup> and the *Forfeiture Policy Statement*.<sup>11</sup> In examining Steckline’s *NAL Response*, Section 503(b)(2)(E) of the Act requires that the Commission take into account the nature, circumstances, extent, and gravity of the violation 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>12</sup> As discussed below, we have considered Steckline’s *NAL Response* in light of these statutory factors and find that the violations were willful and repeated, but that a forfeiture reduction is justified based on Steckline’s prior good faith efforts to comply with the Commission’s antenna structure fencing rules.

5. Steckline asserts that the violations were not willful or repeated because the Antenna Structure’s fencing and temporary repairs were damaged by storms.<sup>13</sup> We disagree. The mere fact that an antenna structure’s fence may have been damaged by weather does not necessarily mean that a resulting violation was not willful, and we have repeatedly assessed forfeitures for violations potentially caused by weather damage.<sup>14</sup> The Act does not require an intent to violate the law in order for a violation to be willful, only a “conscious and deliberate commission or omission of [any] act.”<sup>15</sup> While the Commission previously has found that AM antenna structure fencing violations were not willful when caused by actions beyond the

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<sup>5</sup> *Id.* at 6174–75, para. 3.

<sup>6</sup> Letter from Greg Steckline, President, Steckline Communications, Inc., to Kansas City Office, South Central Region, Enforcement Bureau at 1 (June 3, 2013) (on file in EB-FIELDSCR-12-00003982) (*NAL Response*).

<sup>7</sup> *Id.* Previously, Steckline stated it was unaware when the temporary repairs to the fence were damaged and claimed it must have been damaged by the wind. *See NAL*, 28 FCC Rcd at 6175, para. 3.

<sup>8</sup> *Id.* Repairs of the Antenna Structure’s fencing were completed on July 17, 2012. *Id.*

<sup>9</sup> 47 U.S.C. § 503(b).

<sup>10</sup> 47 C.F.R. § 1.80.

<sup>11</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), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

<sup>12</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>13</sup> *NAL Response* at 1.

<sup>14</sup> *See, e.g., JMK Commc’ns, Inc.*, Forfeiture Order, 28 FCC Rcd 6215 (Enf. Bur. 2013) (imposing \$7,000 forfeiture for antenna structure fencing violations that purportedly resulted from an “unforeseeable natural disaster” that caused “extensive flooding”); *Rama Commc’ns, Inc.*, Forfeiture Order, 22 FCC Rcd 3985 (Enf. Bur. 2007) (imposing \$7,000 forfeiture for antenna structure fencing violations allegedly caused by a storm); *see also Catholic, Apostolic & Roman Catholic Church in Puerto Rico*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 342 (Enf. Bur. 2014) (proposing \$7,000 forfeiture for antenna structure fencing violations that purportedly resulted from “heavy storms”).

<sup>15</sup> 47 U.S.C. § 312(f)(1).

antenna structure owner's control, it has required the owner to produce evidence that it regularly monitored the condition of its antenna site and the violation occurred "just prior" to the Commission's inspection.<sup>16</sup>

6. Here, Steckline knew that the Antenna Structure's fencing was damaged in April 2012, but did not implement permanent repairs for more than two months and only after the agent's inspection. Steckline has provided no evidence that it undertook regular monitoring of the Antenna Structure after discovering the initial weather damage in April 2012 or at any other time prior to the inspection. Although Steckline purportedly implemented temporary repairs to the Antenna Structure's fencing in early May 2012, the agent observed the fencing section lying on the ground over two months later. As noted above, the condition of the Antenna Structure's fencing indicated that was in disrepair for some time.<sup>17</sup> At a minimum, Steckline admits that the temporary fencing repairs were ineffective for at least eight days.<sup>18</sup> Consequently, even if Steckline's violations were not willful, they were repeated, which provides a sufficient basis to assess a forfeiture against Steckline under the Act.<sup>19</sup> We therefore find that Steckline failed to demonstrate that it regularly monitored the condition of the Antenna Structure's fencing and the violation occurred "just prior" to inspection, and conclude that Steckline's violations were willful. In addition, as Steckline admits that the Antenna Structure's fencing was down for at least eight days prior to the inspection, we conclude that Steckline's violations were repeated.

7. Steckline further asserts that a forfeiture reduction is warranted because it promptly repaired the Antenna Structure's fencing following the inspection.<sup>20</sup> Corrective action taken to come into compliance after an inspection is expected, and does not nullify or mitigate any prior forfeitures or violations.<sup>21</sup> However, we find that a forfeiture reduction is warranted based on Steckline's good faith compliance efforts to implement the temporary fencing repairs prior to the inspection and we reduce the penalty imposed to \$5,600.<sup>22</sup>

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<sup>16</sup> See, e.g., *Vernon Broad., Inc.*, Memorandum Opinion and Order, 60 Rad. Reg. 2d 1275 (1986) (cancelling a \$1,000 AM tower fencing violation where the evidence indicated that the fencing was vandalized just prior to inspection).

<sup>17</sup> See *JMK Commc'ns*, 28 FCC Rcd at 6215, para. 2 (observing condition of fencing indicated that it was damaged for a significant period of time).

<sup>18</sup> Steckline did not state how it determined the temporary repairs were damaged eight days prior to the inspection. Consequently, it is not clear from the record whether Steckline knew of the damage and allowed the fallen fencing to remain in place until the inspection.

<sup>19</sup> The Commission may assess a forfeiture for violations that are merely repeated, and not willful. See 47 U.S.C. § 503(b)(1)(B) (stating that any person determined by the Commission to have "willfully *or repeatedly* failed to comply with any of the provisions of [the] Act or of any rule, regulation, or order issued by the Commission . . . shall be liable to the United States for a forfeiture penalty") (emphasis added); *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>20</sup> *NAL Response* at 1.

<sup>21</sup> See, e.g., *Seawest Yacht Brokers*, Notice of Forfeiture, 9 FCC Rcd 6099, 6099, para. 7 (1994) (citations omitted); *Rama Commc'ns, Inc.*, 22 FCC Rcd at 3987, para. 8.

<sup>22</sup> See, e.g., *Sutro Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 15274, 15277, para. 10 (2004) (stating that the Commission will generally reduce a forfeiture "based on the good faith corrective efforts of a violator when those corrective efforts were taken prior to Commission notification of the violation"); *Catholic Radio Network of Loveland, Inc.*, Forfeiture Order, 29 FCC Rcd 121, 122–23, para. 5 (Enf. Bur. 2014) ("The Commission will generally reduce an assessed forfeiture based on the good faith corrective efforts of a violator when those corrective efforts were taken *prior* to Commission notification of the violation.") (emphasis in original); *Frandsen Media Co., LLC*, Forfeiture Order, 29 FCC Rcd 9242 (Enf. Bur. 2014) (reducing forfeiture where antenna structure owner took good faith efforts to replace radiofrequency radiation warning signs allegedly stolen by vandals).

#### IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Rules, Steckline Communications, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five thousand six hundred dollars (\$5,600) for violations of Section 73.49 of the Rules.<sup>23</sup>

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.<sup>24</sup> If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.<sup>25</sup> Steckline Communications, Inc. shall send electronic notification of payment to SCR-Response@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>26</sup> 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.

10. Any request for making full payment over time 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>27</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.

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<sup>23</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 73.49.

<sup>24</sup> 47 C.F.R. § 1.80.

<sup>25</sup> 47 U.S.C. § 504(a).

<sup>26</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>27</sup> See 47 C.F.R. § 1.1914.

11. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to Steckline Communications, Inc. at 1632 S. Maize Rd., Wichita, KS 67209, and to its attorney, James P. Riley at Fletcher, Heald and Hildreth, 1300 North 17th Street, 11th Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton  
Regional Director, South Central Region  
Enforcement Bureau