

**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

FORFEITURE ORDER

Adopted: November 3, 2014

Released: November 4, 2014

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. We impose a penalty of \$5,600 against Alaska Integrated Media, Inc. (Alaska Integrated) for willfully and repeatedly violating the Commission's antenna structure fencing rules. The Commission's fencing rules protect the public by limiting access to areas with a high potential for radio frequency exposure. Alaska Integrated claims that the antenna structure was not accessible and the violations were not willful because its antenna structure fencing was damaged by weather. Alaska Integrated also argues that the penalty is unenforceable under the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA). For the reasons stated below, we find that the antenna structure was accessible, the violations were willful, and the penalty complies with SBREFA. However, we reduce the penalty imposed based on Alaska Integrated's demonstrated history of compliance with the Commission's rules.

2. Specifically, we issue a monetary forfeiture to Alaska Integrated, owner of the Station KOAN antenna tower located in Knik, Alaska (the Antenna Structure), for willful and repeated violation of Section 73.49 of the Commission's rules (Rules).¹

II. BACKGROUND

3. On July 27, 2012, the Enforcement Bureau's Anchorage Resident Agent Office (Anchorage Office) issued a Notice of Apparent Liability for Forfeiture and Order (*NAL*) to Alaska Integrated proposing a \$7,000 forfeiture for failing to effectively enclose the Antenna Structure within a locked fence or other enclosure.² As reflected in the *NAL*, on March 8, 2012, and again on March 15, 2012, Anchorage Office agents observed that wood planks were missing from the fencing enclosing the Antenna Structure, thereby allowing access to its base.³ In its *NAL Response*, Alaska Integrated admits that the wood planks had fallen, but denies that the Antenna Structure was accessible because significant snow prevented access to the Antenna Structure's base.⁴ In addition, Alaska Integrated claims that the damaged fencing was

¹ 47 C.F.R. § 73.49. We note that on November 20, 2013, Alaska Integrated changed the call sign for this station to KVNT.

² *Alaska Integrated Media, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 8283 (Enf. Bur. 2012) (*NAL*). A comprehensive recitation of the facts and history of this case can be found in the *NAL* and is incorporated herein by reference.

³ *Id.* at 8284, para 5.

⁴ *See* Response of Alaska Integrated Media, Inc., to Anchorage Resident Agent Office, Western Region, Enforcement Bureau (Aug. 29, 2012) (on file in EB-FIELDWR-12-00001355) (*NAL Response*).

caused by an “Act of God,” and therefore the violations were not willful.⁵ Alaska Integrated also requests withdrawal or reduction of the forfeiture because the Commission allegedly never complied with its obligations under SBREFA⁶ and because Alaska Integrated has a history of compliance with the Rules.⁷

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),⁸ Section 1.80 of the Rules,⁹ and the *Forfeiture Policy Statement*.¹⁰ In examining Alaska Integrated’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.¹¹ As discussed below, we have considered Alaska Integrated’s *NAL Response* in light of these statutory factors and find that a forfeiture reduction is warranted based on Alaska Integrated’s history of compliance with the Rules.

5. We affirm the *NAL*’s finding that Alaska Integrated violated Section 73.49 of the Rules.¹² Alaska Integrated admits that “several planks in the wooden fence which surrounds [the Antenna Structure] had fallen out of the fence and were lying on the ground on the dates that the agents from the FCC’s Anchorage Field Office inspected the transmitter site.”¹³ Alaska Integrated argues, however, that the Antenna Structure was not accessible because significant snow prevented access to the Antenna Structure’s base.¹⁴ Upon review of the record evidence, including photographs of the site, we find that the Anchorage Office agents were able to access the Antenna Structure on both days that they investigated the site, that the site was accessible on foot, and that the missing planks created an opening in the fence that allowed access to the base of the Antenna Structure.

6. We also affirm the *NAL*’s finding that Alaska Integrated’s fencing violations were willful.¹⁵ Alaska Integrated argues that the violations were not willful because the snowfall was an “Act of God” responsible for the Antenna Structure’s damaged fencing.¹⁶ The Act defines “willful” as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.¹⁷ 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.¹⁸ As stated above, the Antenna Structure’s fence was

⁵ *Id.* at 2–3.

⁶ Pub. L. No. 104-121, 110 Stat. 847 (1996), as amended by Pub. L. No. 110-28, 121 Stat. 112 (2007).

⁷ See *NAL Response* at 4–6.

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. § 1.80.

¹⁰ *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*).

¹¹ 47 U.S.C. § 503(b)(2)(E).

¹² See *NAL*, *supra* note 2.

¹³ *NAL Response* at 2.

¹⁴ *Id.* at 2–3. Alaska Integrated states that it was unable to access and repair the fence until May 15, 2012. *Id.* at 3.

¹⁵ *NAL*, 27 FCC Rcd at 8284, para. 5.

¹⁶ *NAL Response* at 3.

¹⁷ 47 U.S.C. § 312(f)(1).

accessible by foot on March 8, 2012, and March 15, 2012, and Alaska Integrated's omission in failing to repair or replace the damaged fencing makes its violations willful under the Act.¹⁹

7. Alaska Integrated also requests cancellation of the forfeiture, arguing that it is a "small entity" as that term is used in the SBREFA and that the Commission has never complied with its obligation under the SBREFA to adopt a specific policy or program concerning the reduction or waiver of forfeitures for small entities.²⁰ We find no merit in Alaska Integrated's contention. The Commission has previously determined that its policies for assessing penalties established in the *Forfeiture Policy Statement* complied with the SBREFA.²¹ In particular, the Commission found that its forfeiture policy complied with SBREFA by requiring consideration of a small entity's ability to pay, any good faith efforts to comply with the law, and other downward adjustment factors that encompass many of SBREFA's exclusions and conditions.²² Indeed, the Commission reaffirmed just last month that "its existing forfeiture policy, including the various factors by which it may adjust a proposed forfeiture upward or downward based on the facts presented, will continue to be applied, in compliance with SBREFA."²³ As a result, we find that the forfeiture assessed against Alaska Integrated is enforceable under SBREFA.²⁴

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¹⁸ See, e.g., *Steckline Commc'ns*, Forfeiture Order, DA 14-1416, para. 5 (Oct. 2, 2014) (imposing \$5,600 forfeiture for antenna structure fencing violations that purportedly resulted from severe storms); *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").

¹⁹ Of particular concern is the fact that the Antenna Structure was located within 500 feet of a residence and 300 feet of a public road. See *NAL*, 27 FCC Rcd at 8283, para. 2. We recognize that the Commission previously has found that antenna structure fencing violations were not willful when caused by actions beyond the antenna structure owner's control, but 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. See, e.g., *Steckline Commc'ns*, DA 14-1416 at para. 6; *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).

²⁰ *NAL Response* at 4-6.

²¹ *Forfeiture Policy Statement*, 12 FCC Rcd at 17109, para. 52. See *Jerry Szoka*, Decision, 14 FCC Rcd 9857, 9866, para. 23 (1999) ("In amending our rules to adopt our forfeiture guidelines, we made clear that our existing policies comply with . . . SBREFA).

²² *Forfeiture Policy Statement*, 12 FCC Rcd at 17109, para. 52. See *United States v. Neely*, 595 F. Supp. 2d 662 (D.S.C. 2009) (SBREFA does not require reduction of a forfeiture assessed by the Commission where the *Forfeiture Policy Statement* established procedures and guidelines through which the Commission could consider whether small entities had the ability to pay a particular forfeiture amount or the ability to submit the same kind of documentation as larger entities to corroborate their inability to pay); see also *Latin Broad. Co.*, Forfeiture Order, 29 FCC Rcd 8223 (Enf. Bur. 2014) (assessment of forfeiture against small radio licensee that took into account the broadcaster's history of compliance and ability to pay was consistent with the SBREFA); *Pac. Empire Radio Corp.*, Forfeiture Order, 29 FCC Rcd 1177 (Enf. Bur. 2014) (same).

²³ *N. Cnty. Broad. Corp.*, Memorandum Opinion and Order, FCC 14-163 (Oct. 15, 2014) (affirming \$4,800 forfeiture against small radio licensee where Enforcement Bureau took into account the broadcaster's history of compliance and ability to pay, consistent with the requirements of the SBREFA).

²⁴ If Alaska Integrated believes it is unable to pay the assessed forfeiture by the deadline established in this Forfeiture Order, it may request an installment payment plan. See *infra* para. 11.

8. Finally, Alaska Integrated requests a forfeiture reduction based on its history of compliance with the Rules.²⁵ Based on a review of Commission records, Alaska Integrated has not been previously cited for a violation of the Act or the Rules. Consistent with the Commission's forfeiture adjustment factors,²⁶ we therefore find that a forfeiture reduction of \$1,400 is warranted based on Alaska Integrated's history of compliance. Therefore, after consideration of the entire record and the factors listed above, we impose a forfeiture in the amount of \$5,600.

IV. ORDERING CLAUSES

9. 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, Alaska Integrated Media, 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.²⁷

10. 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.²⁸ 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.²⁹ Alaska Integrated Media, Inc., shall send electronic notification of payment to WR-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.³⁰ 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.

²⁵ *NAL Response* at 4.

²⁶ 47 C.F.R. § 1.80(b)(8), Note: Guidelines for Assessing Forfeitures, Section II, Adjustment Criteria for Section 503 Forfeitures (adjustment factors included by the Commission in its downward adjustment criteria are: (1) minor violation; (2) good faith or voluntary disclosure; (3) history of compliance; and (4) inability to pay).

²⁷ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 73.49.

²⁸ 47 C.F.R. § 1.80.

²⁹ 47 U.S.C. § 504(a).

³⁰ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

11. 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. 20554.³¹ 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.

12. **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 Alaska Integrated Media, Inc., 4700 Business Park Boulevard, Suite 44-A, Anchorage, Alaska 99503, and to its counsel, David Tillotson, 4606 Charleston Terrace, NW, Washington, D.C. 20007-1911.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

³¹ See 47 C.F.R. § 1.1914.