

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

In the Matter of	)	
	)	
People's Broadcast Network, LLC	)	File No.: EB-FIELDNER-13-00006508
	)	NAL/Acct. No.: 201432260001
Licensee of AM Station WDJZ	)	FRN No.: 0007650369
Bridgeport, Connecticut	)	Facility ID No.: 8516
	)	

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

**Adopted:** March 20, 2014

**Released:** March 20, 2014

By the District Director, Boston Office, Northeast Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (*NAL*), we find that People's Broadcast Network, LLC (People's Broadcast Network), licensee of AM Station WDJZ in Bridgeport, Connecticut (Station), apparently willfully and repeatedly violated Section 73.49 of the Commission's rules (Rules)<sup>1</sup> by failing to enclose the antenna structures in Station WDJZ's three-tower array within effective locked fences or other enclosures. We conclude that People's Broadcast Network is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000). In addition, we direct People's Broadcast Network to submit, no later than thirty (30) calendar days from the date of this *NAL*, a statement signed under penalty of perjury stating that People's Broadcast Network complies with the Commission's fencing requirements.

**II. BACKGROUND**

2. On July 20, 2012, agents from the Enforcement Bureau's Boston Office (Boston Office) inspected AM Station WDJZ's three-tower array located at 39 Salt Street in Bridgeport, Connecticut. All three antenna structures have radio frequency potential at their bases.<sup>2</sup> The agents observed that the wooden fences surrounding each of the antenna structures were missing entire sections, which allowed unrestricted access to the base of each of the antenna structures. The agents did not observe a perimeter fence surrounding the property where the antenna structures were located. Later that day, one of the agents contacted the Station's General Manager and advised him about the condition of the fences. The General Manager stated to the agent that he was aware of the damaged fences, but that financial difficulties had prevented People's Broadcast Network from repairing the fences. The agent advised the General Manager to install temporary fencing until permanent fences could be installed.

3. On August 27, 2013, agents from the Boston Office re-inspected Station WDJZ's three-tower array and found that the fences around the antenna structures had been neither repaired nor replaced. Indeed, the agent observed that even more sections were missing from the fences. One of the agents contacted the Station and left a message with the General Manager regarding the uncorrected and deteriorating condition of the fences.

<sup>1</sup> 47 C.F.R. § 73.49.

<sup>2</sup> See License for Station WDJZ, File No. BZ-901127AD.

### III. DISCUSSION

4. Section 503(b) of the Communications Act of 1934, as amended (Act),<sup>3</sup> 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. 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 section 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 or Other Enclosure

5. Section 73.49 of the Rules states that antenna structures “having radio frequency potential at the base ... must be enclosed within effective locked fences or other enclosures.”<sup>9</sup> Individual fences need not be installed if the antenna structures are contained within a protective property fence.<sup>10</sup> On July 20, 2012, Boston Office agents observed that the fences surrounding Station WDJZ’s antenna structures were each missing several sections, thereby allowing unrestricted access to the antenna structure bases. When the agent contacted People’s Broadcast Network on July 23, 2012, the Station’s General Manager acknowledged the condition of the fences and stated that he had contacted a contractor to evaluate the damage. Nevertheless, when the agents returned to the tower site on August 27, 2013, the agents found that, not only had the fences not been repaired or replaced, but the condition of the fences had deteriorated further. Based on the evidence before us, we find that People’s Broadcast Network apparently willfully and repeatedly violated Section 73.49 of the Rules by failing to enclose Station WDJZ’s antenna structures with effective locked fences or other enclosures.

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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 [A]ct (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., *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.*

**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 failure to maintain AM tower fencing is \$7,000.<sup>11</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>12</sup> People's Broadcast Network's failure to make any effort to repair or replace the damaged fencing at its three-tower array, even after being reminded by FCC agents about the condition of the fences and their importance, reflects a deliberate disregard for the Rules that warrants an upward adjustment. Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that People's Broadcast Network is apparently liable for a total forfeiture in the amount of \$10,000.<sup>13</sup>

7. We further order People's Broadcast Network 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 People's Broadcast Network, stating that the Station complies with the Commission's fencing rules and that its antenna structures are enclosed within effective locked fences or other enclosures. This statement must be provided to the Boston 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(b), 0.311, 0.314 and 1.80 of the Commission's Rules, People's Broadcast Network, LLC is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) 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, People's Broadcast Network, LLC **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 People's Broadcast Network, LLC, 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

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<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) ("*Forfeiture Policy Statement*"), *recons. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

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

<sup>13</sup> See e.g. *Equity Communications, LP*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 8031 (Enf. Bur., Philadelphia Office 2012) (proposing \$3,000 upward adjustment for failing to immediately correct the AM fencing violation and for previously committing a similar violation); see also *Equity Communications, LP*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 15187 (Enf. Bur., Philadelphia Office 2011) (proposing \$3,000 upward adjustment for failure to immediately correct antenna structure marking violation and AM fencing violation).

<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(b), 0.311, 0.314, 1.80, 73.49.

Federal Communications Commission, Enforcement Bureau, Northeast Region, Boston Office, 1 Batterymarch Park, Quincy, Massachusetts, 02169. People's Broadcast Network, LLC shall also e-mail the written statement to [NER-Response@fcc.gov](mailto:NER-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. People's Broadcast Network, LLC shall also send electronic notification on the date said payment is made to [NER-Response@fcc.gov](mailto:NER-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 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 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>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, Northeast Region, Boston Office, 1 Batterymarch Park, Quincy, Massachusetts, 02169 and include the NAL/Acct. No. referenced in the caption. People's Broadcast Network, LLC also shall email the written response to [NER-Response@fcc.gov](mailto:NER-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.

<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>.

<sup>17</sup> See 47 C.F.R. § 1.1914.

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

Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. **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 regular mail, to People's Broadcast Network, LLC at 301 Guinea Road, Stamford, Connecticut 06903.

FEDERAL COMMUNICATIONS COMMISSION

Dennis Loria  
District Director  
Boston Office  
Northeast Region  
Enforcement Bureau