

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

In the Matter of)	
)	
Commonwealth License Subsidiary, LLC)	File Number: EB-01-DV-138
)	NAL/Acct. No. 200232800004
Licensee of Station KLMR(AM))	FRN 0003-7484-98
Lamar, Colorado)	
Facility ID #174)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: May 30, 2002

By the District Director, Denver Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Commonwealth License Subsidiary, LLC ("Commonwealth"), licensee of station KLMR, in Lamar, Colorado, apparently willfully violated Section 73.49 of the Commission's Rules ("Rules"),¹ by failing to provide an effective locked fence enclosing the station's antenna structures. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),² that Commonwealth is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000).

II. BACKGROUND

2. On April 25, 2001, a Denver Office Agent inspected station KLMR's two antenna structures (NE#1 tower ASR number 1023201 and SW#2 tower ASR 1023200). The inspection revealed that the wooden fence around the NE#1 tower was approximately four feet tall, the gate on the fence was not locked and several wooden pickets were missing. The wooden fence around the SW#2 tower was also only approximately four feet tall and had large openings with missing wooden pickets. Neither fence represented an effective enclosure of the tower.

3. On December 7, 2001, the Denver Office issued a Notice of Violation ("NOV") to Commonwealth for the violations detected on April 25, 2001. On December 27, 2001, Commonwealth submitted a reply to the NOV. Commonwealth indicated that on the afternoon of April 25, 2001, following the inspection by the FCC agent, the gate lock to NE#1 tower was secured. Commonwealth stated that the

¹ 47 C.F.R. § 73.49.

² 47 U.S.C. § 503(b).

missing wooden pickets from the fence enclosing the NE#1 and SW#2 towers were replaced on April 26, 2001. Commonwealth further represented that a six-foot tall fence would be constructed ten feet from the tower base on all sides for the NE#1 tower. Commonwealth's reply did not clearly state its intentions regarding the overall height of the fence around SW#2 tower.

III. DISCUSSION

4. Section 503(b) of the Act provides that any person who willfully fails to comply substantially with the terms and conditions of any license, or willfully 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.³ The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁴

5. Section 73.49 of the Rules states in part that "[a]ntenna towers having radio frequency potential at the base (series fed, folded unipole, and insulated base antennas) must be enclosed within effective locked fences or other enclosures." KLMR's license describes the antenna system as a series excited vertical radiator. A "series excited" radiator may also be described as a "series fed" radiator. The AM transmission fencing requirements thus apply to station KLMR. The inspection of the two KLMR towers revealed that the NE#1 tower's gate at the base fence was not locked, several wooden pickets were missing, and the overall fence height did not represent an effective enclosure of the tower. The SW#2 tower's base fence had large openings with missing wooden pickets and the overall fence height did not represent an effective enclosure of the tower. Effective base fencing is an important safety requirement. AM series fed antenna structures radiate energy that renders any physical contact with the antenna structure itself extremely dangerous. In addition, AM antenna structures are capable of generating radio frequency fields at the base of the antenna structure that may exceed the Commission's maximum permissible exposure guidelines. Effective base fencing is thus important to prevent possible contact with the radiating structure and excessive radio frequency radiation exposure.

6. Based on the evidence before us, we find that Commonwealth failed to enclose the AM transmission system for station KLMR with effective locked fences or other enclosures in willful violation of Section 73.49 of the Commission's Rules. The base forfeiture amount set by *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"),⁵ and Section 1.80 of the Rules,⁶ for failure to comply with AM tower fencing is \$7,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,⁷ which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, and history

³ 47 U.S.C. § 503(b).

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(D).

of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case, a \$7,000 forfeiture is warranted.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Commonwealth License Subsidiary, LLC, is hereby NOTIFIED of an APPARENT LIABILITY FOR A FORFEITURE in the amount of seven thousand dollars (\$7,000) for violation of Section 73.49 of the Rules.⁸

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Commonwealth License Subsidiary, LLC, SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment MUST INCLUDE the FCC Registration number (FRN) and the NAL/Acct. No. referenced in the caption.

10. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and must include the NAL/Acct. No. referenced in the caption.

11. 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.

12. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

13. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail # 7001 0320 0002 9702 4405, Return Receipt Requested, to Commonwealth License Subsidiary, LLC, 2550 Fifth Avenue, Suite 723, San Diego, CA 92103.

FEDERAL COMMUNICATIONS COMMISSION

Leo E. Cirbo

⁸ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80 and 73.49.

⁹ See 47 C.F.R. § 1.1914.

District Director, Denver Office