
Federal Communications Commission

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

In the Matter of)	
)	
Stone/Collins Communications, Inc.)	File No. EB-09-AT-0018
)	
Licensee of Radio Station)	NAL/Acct. No. 201032480001
WEPG (AM))	
South Pittsburg, TN)	FRN 0004986998
Facility ID #40154		

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: January 11, 2010

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 Stone/Collins Communications, Inc. (“Stone/Collins”), licensee of station WEPG(AM), in South Pittsburg, Tennessee, apparently willfully and repeatedly violated Sections 73.49 and 73.3526 of the Commission’s Rules (“Rules”)¹ by failing to enclose the base of its AM antenna structure within a locked fence and failing to maintain and make a available a public inspection file. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),² that Stone/Collins is apparently liable for a forfeiture in the amount of seventeen thousand dollars (\$17,000).

II. BACKGROUND

2. On August 19, 2009, agents of the Commission’s Atlanta Office of the Enforcement Bureau (“Atlanta Office”), accompanied by the station owner and other station personnel, inspected the main studio of radio station WEPG during normal business hours. The agents asked to inspect the station’s public inspection file and were told that there was no public inspection file and that the station never had one. Furthermore, the station personnel were not familiar with the public inspection file requirements.

3. Still on August 19, 2009, the agents inspected the fence surrounding the agent’s antenna structure, which had radio frequency potential at the base. The agents observed that the gate on the chain link fence surrounding the base of the tower was wide open. There was no lock to secure the gate, and there was no evidence of any prior lock on the gate. The agents observed dense overgrowth of weeds and bushes inside the fence and in front of the opened gate, demonstrating that the gate had been open for a long time. The agents did not observe any perimeter property fence.

¹ 47 C.F.R. §§ 73.49 and 73.3526.

² 47 U.S.C. § 503(b).

III. DISCUSSION

4. Section 503(b) of the 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. The term “willful” as used in Section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.³ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁴

5. Section 73.49 of the Rules states that “antenna towers having radio frequency potential at the base... must be enclosed within effective locked fences or other enclosures.” On August 19, 2009, agents from the Atlanta Office observed that the gate on the chain link fence surrounding the base of the tower was wide open. There was no lock to secure the gate, and no evidence of any prior lock on the gate. There was dense overgrowth of weeds and bushes all around the base of the tower, and inside the fence, restricting access to the tower.⁵ There were also tall weeds growing up in front of the opened gate, demonstrating that the gate had been open for a long time. The tower had radio frequency potential at the base. The agents did not observe a property fence around the perimeter of the property.

6. Section 73.3526 of the Rules states that “every permittee or licensee of an AM, FM, TV or Class A TV station in the commercial broadcast services shall maintain a public inspection file.” The public inspection file shall be maintained at the main studio of the station. The file shall be available for public inspection at any time during regular business hours. On August 19, 2009, agents from the Atlanta Office asked to inspect the station’s public inspection file at the station’s main studio during regular business hours. Station personnel stated that there was no public inspection file and that the station had never had one. No one at the station, including the owner, was able to provide any evidence that a public inspection file had ever existed.

7. Based on the evidence before us, we find that Stone/Collins apparently willfully and repeatedly violated Sections 73.49 and 73.3526 of the Rules by failing to maintain an effective locked fence or other enclosure at the base of the station’s antenna tower and failing to maintain a public inspection file. We also find that Stone/Collins apparently willfully violated Section 73.3536 of the Rules by failing to make available a public inspection file.

8. Pursuant to *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, (“*Forfeiture Policy Statement*”), and Section 1.80 of the Rules, the base forfeiture amount for failing to maintain an effective locked tower fence or enclosure is \$7,000; and failing to maintain a public file is \$10,000.⁶ 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

³ 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).

⁴ 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.”

⁵ See 47 C.F.R. § 73.49 (“[r]eady access must be provided to each antenna tower base for meter reading and maintenance purposes at all times.”).

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.⁷ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Stone/Collins is apparently liable for a seventeen thousand dollar (\$17,000) forfeiture.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Stone/Collins Communications, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seventeen thousand dollars (\$17,000) for violations of Sections 73.49 and 73.3526 of the Rules.⁸

10. **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 for Forfeiture, Stone/Collins Communications, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁸ If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. If payment is made, Stone/Collins will send electronic notification on the date said payment is made to, SCR-Response@fcc.gov.

12. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Atlanta Office, 3575 Koger Blvd., Suite 320, Duluth, Georgia, 30096 and must include the NAL/Acct. No. referenced in the caption.

13. 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.

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.49 and 73.3526.

⁸ See 47 C.F.R. § 1.1914.

Federal Communications Commission

14. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Stone/Collins Communications, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

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