

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

In the Matter of	)	File No.: EB-01-AT-464
	)	
Wilson Broadcasting Co., Inc.	)	NAL/Acct. No. 200232480005
Licensee, Station WAGF(AM)	)	
Dothan, Alabama	)	FRN 0004-3330-19

**FORFEITURE ORDER**

**Adopted: March 12, 2003**

**Released: March 17, 2003**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000) to Wilson Broadcasting Co., Inc. (“Wilson”), licensee of Station WAGF(AM), Dothan, Alabama, for willful and repeated violation of Section 73.49 of the Commission’s Rules (“the Rules”).<sup>1</sup> The noted violation involves Wilson’s failure to provide an effective locked fence enclosure for the station’s antenna structure.

2. On June 10, 2002, the District Director of the Commission’s Atlanta, Georgia Field Office (“Atlanta Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”)<sup>2</sup> in the amount of \$7,000 to Wilson. Wilson submitted a response on August 2, 2002.<sup>3</sup>

**II. BACKGROUND**

3. On April 23, 2002, a Commission agent from the Atlanta Field Office conducted an inspection of the WAGF(AM) transmitter site and antenna structure. The antenna structure with a folded unipole AM broadcast antenna attached was not enclosed by fencing. Also, the feed wire from the tuning box to the antenna was not protected by fencing. The antenna had radio frequency potential at the base of the antenna structure.

4. On April 24, 2002, a Commission agent from the Atlanta field office inspected station WAGF(AM). Again, the agent noted that the station’s antenna structure was not enclosed by fencing. The station owner, Mr. J.R. Wilson, stated that the station had been operating for about one month and that the fencing had not yet been installed. On June 10, 2002, the District Director of the Atlanta Office issued a *NAL* to Wilson for violation of Section 73.49 of the Rules.

---

<sup>1</sup> 47 C.F.R. § 73.49.

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 20023480005 (Enf. Bur., Atlanta Field Office, released June 10, 2002).

<sup>3</sup> A response to a Commission *NAL* should be filed within 30 days of the issuance of the *NAL*. See Section 1.80(f)(3) of the Rules. Although Wilson’s response was filed more than 30 days from the issuance of the *NAL*, we will still consider it in this proceeding to ensure that we have a complete record.

5. On August 2, 2002, Wilson submitted a response to the *NAL*. In its response, Wilson claims that the forfeiture was proposed in error and the *NAL* must be rescinded because the antenna structure was surrounded by a protective property fence, and therefore was not accessible to the general public.

### III. DISCUSSION

6. The forfeiture amount in this case is being assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999). In examining Wilson’s response, Section 503(b) 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>6</sup>

7. Section 73.49 of the Rules provides that antenna 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. Section 73.49 also provides that individual tower fences need not be installed if the towers are contained within a protective property fence. Wilson claims that at the time of the inspection the WAGF tower was surrounded by a protective property fence and the tower was therefore not accessible by the general public. Although the property was surrounded by a fence, the investigating agent observed breaks in the fence and there was an open gap in the fence at the driveway. On April 23, 2002, when the agent inspected the transmitter site and on April 24, 2002, when the agent inspected the property with Mr. Wilson, the agent drove directly onto the property without complete restriction from the property fence and walked right up to the unenclosed tower. Although Wilson indicates that construction on a second tower was on-going at the time of the inspection and that construction required portions of the property fence to be removed, the existing tower was still radiating and unenclosed during such construction, presenting a possible safety hazard. Further, Wilson indicates that the fence surrounding the antenna structure was taken down on April 20, 2002, to facilitate the new construction, and the new fence surrounding the antenna structure was constructed “on or about April 26, 2002.” However, Wilson does not indicate what measures were taken during construction to protect individuals from the radiating tower in the interim.

8. Wilson also claims that the fact that Mr. Wilson’s brother resided on the property at the time of the tower construction helped to prevent intrusion onto the site. Wilson further contends that a portion of the land surrounding the property is swampland which also added a “further barrier that precluded casual or inadvertent access to the site.” However, the rules require that the type of antenna structure at issue here be surrounded either by an effective locked fence or other enclosure or be contained within a protective property fence. The fact that a portion of the property abuts swampland or that someone lives on the property to provide security does not excuse Wilson from complying with the requirements of Section 73.49. Further, the fact that the investigating agent could drive, unimpeded, onto the property, walk right up to the antenna structure and touch it at a time when it was radiating means that Wilson had neither an effective locked fence enclosure nor an effective protective property fence. Therefore, Wilson was in violation of Section 73.49 of the Rules. Finally, although Wilson also claims that the front gate was locked at all times when the site was unoccupied, the agent has stated that there was no gate on the property fence at the time he conducted the inspection and a section of the property fence had been removed to facilitate the construction of the tower.

---

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</sup> 47 U.S.C. § 503(b)(2)(D).

9. **ACCORDINGLY, IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>7</sup> Wilson Broadcasting Co., Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$7,000 for willfully and repeatedly violating Section 73.49 of the Rules.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>8</sup> Payment shall be made by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 20023480005, and FRN 0004-3330-19. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>9</sup>

11. **IT IS FURTHER ORDERED THAT** this *Order* shall be sent by regular mail and by certified mail, return receipt requested, to Wilson Broadcasting Co., Inc., Radio Station WAGF(AM), 808 N. Oates St., Dothan, Alabama 36303.

**FEDERAL COMMUNICATIONS COMMISSION**

David H. Solomon  
Chief, Enforcement Bureau

---

<sup>7</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>8</sup> 47 U.S.C. § 504(a).

<sup>9</sup> See 47 C.F.R. § 1.1914.